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NO. D
Supreme Court, U.S.
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OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

DAVID S. HAEG, Petitioner

V.

STATE OF ALASKA, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE ALASKA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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Pro Se

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QUESTIONS
(Ordered chronologically)

1. Was it a violation of the U.S. Constitution, Amendments IV, V, and/or XIV, for the State of Alaska (SOA) to seize, deprive, use as evidence, and forfeit Haeg's property, used as his primary means to provide a livelihood, by utilizing affidavits containing known, prejudicial false statements and/or by tampering with evidence?

2. Was it a violation of the U.S. Constitution, Amendments IV, V, and/or XIV, for the SOA to seize, deprive, use as evidence, and forfeit Haeg's property, used as his primary means to provide a livelihood during a short business season, without a prompt postseizure hearing, notice of a prompt postseizure hearing, and/or notice of right to bond property seized?

3. Was it a violation of the U.S. Constitution, Amendments IV, V, VII, and/or XIV, for Haeg's property to be seized, deprived, use as evidence, and/or forfeited without notice in the charging information that the SOA would seek to forfeit property and/or without notice Haeg had an interest in property that was subject to forfeiture in accordance with the applicable statute?

4. Do Alaska Statutes *12.35.020, 12.35.025, 16.05.190, 16.05.195, 8.54.720(a)(15); Alaska Administrative Codes 5 AAC 92.140(a) and 5 AAC 84.270(14);* and/or the Alaska Rules of Criminal Procedure violate the U.S. Constitution, Amendments IV, V, VI, and/or XIV, because Haeg didn't receive a prompt postseizure hearing and/or notice of such a hearing and the statutes/codes/rules didn't require this and/or notice before forfeiture that Haeg's property may be forfeited?

5. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for the SOA to break Haeg's plea agreement (PA)?

6. Was it a violation of the U.S. Constitution, Amendments V, VIII, and/or XIV, for the SOA to be allowed, without explanation or justification, to increase the severity of already filed charges?

7. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for properly received, accepted, and admitted material evidence to be removed from the official court record of Haeg's case?

8. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for Haeg's statement and other agreements, made for a failed PA, to be used against Haeg at a subsequent trial, sentencing, and appeal?

9. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for the SOA, at Haeg's trial, to intentionally, intelligently, and knowingly give and/or accept false testimony about evidence locations material to their case against Haeg?

10. Was it a violation of the U.S. Constitution, Amendments V, VIII, and/or XIV, for the SOA to knowingly give and/or accept false testimony that they didn't know why Haeg had given up guiding before he was convicted or sentenced and/or for Haeg not to receive credit for the year guiding he gave for a PA?

11. Was it a violation of the U.S. Constitution, Amendments V, VI, and/or XIV, for Haeg's first attorney (Cole) to fail to appear in response to a subpoena and/or for Haeg's second attorney (Robinson) to tell Haeg nothing could be done about the failure?

12. Was it a violation of the U.S. Constitution, Amendments V, VIII, and/or XIV, when Judge Murphy specifically used false testimony knowingly presented by the SOA as justification for Haeg's sentence; sentenced Haeg to punishment not allowed by law; and/or failed to inform Haeg of his right to appeal his sentence?

13. Was it a violation of the U.S. Constitution, Amendments V, VIII, and/or XIV, for Haeg to be or remain convicted of unlawful acts by a guide: hunting same day airborne because the Alaska Court of Appeals (COA) ruled activities conducted under the state sponsored Wolf Control Program (WCP) were governed by Title 16 and/or constituted "hunting" under Alaska law?

14. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, to not stay Haeg's appeal so he could conduct a post conviction relief (PCR) proceeding claiming ineffective assistance of counsel (IAOC) and/or to not order that Haeg's PCR be held in Kenai, Alaska?

15. Was it a violation of the U.S. Constitution, Amendments V, VI, and/or XIV, when the COA ruled there wasn't enough evidence in the record of Haeg's case to establish IAOC?

16. Was it a violation of the U.S. Constitution, Amendments V, VI, and/or XIV, for Haeg to be denied a return of property hearing until he risked his life for it; for Magistrate Woodmancy not to be recused from Haeg's case; and/or for Haeg to not be provided an opportunity to cross-examine adverse witnesses, to present evidence or witness testimony, and/or to argue orally during his return of property hearing?

17. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for Haeg not to be allowed to supplement the record used in deciding his appeal with official proceedings before the Alaska Bar Association (ABA) and/or the Alaska Commission on Judicial Conduct?

18. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for the SOA to be given 12 months to file their appellee brief; for correction of Haeg's sentence to be delayed until it harmed Haeg; and/or to not stay Haeg's license suspension/revocation pending appeal?

19. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for the COA to fail to apply Waiste v. State 10 P.3d 1141 (Ak 2000) when deciding Haeg's appeal?

20. Was it a violation of the U.S. Constitution, Amendments V, VI, and/or XIV, for Haeg's 3 attorneys to intentionally deprive Haeg of constitutional rights?

21. Was it a violation of the U.S. Constitution, Amendments IV, V, VI, VIII, and/or XIV, for Haeg's prosecution, conviction, sentence, and/or appeal to be tainted by systemic corruption within Alaska's judicial system?

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OPINIONS BELOW

May 9, 2005 District Court (DC) order charges be hunting/guiding instead of WCP and not addressing protest PA statement shouldn't be used. Apx.E.

May 17-18, 2005 DC order that Haeg could not argue at trial he was not "hunting". Apx.F.

July 29, 2005 DC conviction judgment. Apx.B.

August 24, 2005 DC order Haeg continue to pay for PA never received. Apx.G.

September 30, 2005 DC final judgment. Apx.H.

November 13, 2006 DC order denying jurisdiction of motion to return property. Apx.I.

November 16, 2006 COA order denying motion to stay appeal pending PCR or hold PCR in Kenai; refusing sentence correction; denying jurisdiction of motion to return property; denying motion to supplement record, and failing to address stay of license revocation/suspension. Apx.J.

December 29, 2006 COA failure to address reconsideration stay of appeal; sentence correction; sentence stay; and/or supplement the record. Apx.K.

March 13, 2007 DC (verbal) order Haeg couldn't confront adverse witnesses, present evidence or witness testimony, and couldn't have oral argument during property hearing and refusal to reconsider. Apx.L.

April 12, 2007 COA denial of Petition for Review of DC order refusing effective property hearing. Apx.M.

May 25, 2007 ASC denial of Petition for Hearing of DC order refusing effective property hearing. Apx.N.

July 3, 2007 COA order denying appeal stay pending PCR. Apx.O.

July 23, 2007 DC order Haeg wasn't entitled to return of property. Apx.P.

August 17, 2007 DC denial of Rehearing. Apx.Q.

March 26, 2008 COA order reconstructing record. Apx.R.

September 10, 2008 COA judgment upholding conviction, sentence, and denying property return. Apx.A.

September 26, 2008 COA denial of Rehearing. Apx.C.

December 1, 2008 ASC denial of Petition for Hearing. Apx.D.

January 26, 2009 DC imprisonment order. Apx.S.

January 30, 2009 ASC final decision in arbitration appeal. Apx.T.

JURISDICTION

On December 1, 2008 the ASC denied Haeg's Petition for Hearing, filed after the September 10, 2008 COA judgment and its September 26, 2008 denial of Rehearing. Under 28 U.S.C. § 1257(a) this Court now has jurisdiction.

CONSTITUTIONAL PROVISIONS INVOLVED

The United States Constitution:

Amendment IV- "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation,"

Amendment V – "No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;"

Amendment VI – "In all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Amendment VIII – Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV - Section 1. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Constitution of the State of Alaska:

Article 1, Section 1 – Inherent Rights – "This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

Article 1, Section 7 - Due Process – "No person shall be deprived of life, liberty, or property, without due process of law."

Article 1, Section 9 - Jeopardy and Self-Incrimination – "No person shall be compelled in any criminal proceeding to be a witness against himself."

Article 1, Section 11 - Rights of Accused – "In all criminal prosecutions, the accused shall have the right to informed of the nature and cause of the accusation; to be released on bail, except for capital offenses when the proof is evident or the presumption great; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Article 1, Section 14 - Searches and Seizures – "The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation,"

ALASKA ADMINISTRATIVE CODES INVOLVED

5 AAC 84.270. Furbearer trapping - Trapping seasons and bag limits for furbearers are as follows...

5 AAC 92.039(h) In accordance with AS 16.05.783, the methods and means authorized in a permit issued under this section are independent of all other methods and means restrictions in AS 16 and this title. (AS 16 includes all hunting).

5 AAC 92.110(m) A wolf population reduction or wolf population regulation program established under this section is independent of, and does not apply to, hunting and trapping authorized in 5 AAC 84 - 5 AAC 85.

5 AAC 92.140. Unlawful possession or transportation of game (a) No person may possess, transport, give, receive, or barter game or parts of game that the person knows or should know were taken in violation of AS 16 or a regulation adopted under AS 16. (b) Repealed 8/12/90. (c) Repealed 8/12/90. (d) Notwithstanding (a) of this section, it is an affirmative defense to the crime of unlawful possession or transportation of game, if the person who possesses and transports game or parts of game taken in violation of AS 16 or a regulation adopted under AS 16 is doing so for the sole purpose of salvaging that game or parts of game as required by 5 AAC 92.220, immediately salvages that game or parts of game from the field and immediately surrenders that game or parts of game to a representative of the state located at the nearest office of the Department of Fish and Game (ADF&G) or Department of Public Safety (DPS).

UNITED STATES CODES INVOLVED

28 U.S.C. § 1257(a) State courts; certiorari (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATUTES INVOLVED

AS 8.54.720(a)(15) person licensed under this chapter to knowingly violate a state statute or regulation prohibiting waste of a wild food animal or hunting on the same day airborne; (d) In addition to a disciplinary sanction imposed under AS 08.54.710, a person who commits an offense set out in (a)(15) of this section is guilty, (1) for a first offense, of a misdemeanor and is punishable by a fine of not more than $30,000 or by imprisonment up to one year, or both; (2) for a second or subsequent offense, of a class C felony. (f) In addition to the penalties set out in (b) - (e) of this section and a disciplinary sanction imposed under AS 08.54.710, (3) the court shall order the department to suspend the guide license or transporter license for a specified period of not less than three years, or to permanently revoke the guide license or transporter license, of a person who commits an offense set out in (a)(15) or (16) of this section.

AS 12.35.020. Grounds For Issuance. A search warrant may be issued if the judicial officer reasonably believes any of the following: (1) that the property was stolen or embezzled; (2) that the property was used as a means of committing a crime; (3) that the property is in the possession of a person who intends to use it as the means of committing a crime, or in possession of another to whom the person may have delivered it for the purpose of concealing it or preventing its being discovered; (4) that the property constitutes evidence of a particular crime or tends to show that a certain person has committed a particular crime; (5) that either reasonable legislative or administrative standards for conducting a routine or area inspection with regard to air pollution are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.

AS 12.35.025. Seizure of Property. (a) Property described in AS 12.35.020 may be taken on a warrant from (1) a house or other place in which it is concealed or may be found; (2) the possession of the person by whom it was stolen, embezzled, or used in the commission of a crime; (3) a person who is in possession of the property; (4) the possession of a person to whom the property has been delivered for the purpose of concealing it or preventing its being discovered, or from a house or other place occupied by that person or under that person's control. (b) When property is seized under this chapter, the peace officer taking the property shall give to the person from whom or from whose premises the property was taken a copy of the warrant, a copy of the supporting affidavit, and a receipt for the property taken, or shall leave the copies and the receipt at the place from which the property was taken.

(c) The return of the warrant to the court shall be made promptly and shall be accompanied by a written inventory of the property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one other person as a witness. (d) The inventory required by (c) of this section shall be signed by the peace officer under penalty of perjury under AS 09.63.020 . The judge or magistrate shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

AS 16.05.190. Seizure and Disposition of Equipment. Guns, traps, nets, fishing tackle, boats, aircraft, automobiles or other vehicles, sleds, and other paraphernalia used in or in aid of a violation of this chapter or a regulation of the department may be seized under a valid search, and all fish and game, or parts of fish and game, or nests or eggs of birds, taken, transported, or possessed contrary to the provisions of this chapter or a regulation of the department shall be seized by any peace officer designated in AS 16.05.150. Upon conviction of the offender or upon judgment of the court having jurisdiction that the item was taken, transported, or possessed in violation of this chapter or a regulation of the department, all fish and game, or parts of them are forfeited to the state and shall be disposed of as directed by the court. If sold, the proceeds of the sale shall be transmitted to the proper state officer for deposit in the general fund. Guns, traps, nets, fishing tackle, boats, aircraft, or other vehicles, sleds, and other paraphernalia seized under the provisions of this chapter or a regulation of the department, unless forfeited by order of the court, shall be returned, after completion of the case and payment of the fine, if any.

AS 16.05.195. Forfeiture of Equipment. (a) Guns, traps, nets, fishing gear, vessels, aircraft, other motor vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this title or AS 08.54, or regulation adopted under this title or AS 08.54, and all fish and game or parts of fish and game or nests or eggs of birds taken, transported, or possessed contrary to the provisions of this title or AS 08.54, or regulation adopted under this title or AS 08.54, may be forfeited to the state (1) upon conviction of the offender in a criminal proceeding of a violation of this title or AS 08.54 in a court of competent jurisdiction; or (2) upon judgment of a court of competent jurisdiction in a proceeding in rem that an item specified above was used in or in aid of a violation of this title or AS 08.54 or a regulation adopted under this title or AS 08.54. (b) Items specified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action. (c) An action for forfeiture under this section may be joined with an alternative action for damages brought by the state to recover damages for the value of fish and game or parts of them or nests or eggs of birds taken, transported, or possessed contrary to the provisions of this title or a regulation adopted under it. (d) It is no defense that the person who had the item specified in (a) of this section in possession at the time of its use and seizure has not been convicted or acquitted in a criminal proceeding resulting from or arising out of its use. (e) Forfeiture may not be made of an item subsequently sold to an innocent purchaser in good faith. The burden of proof as to whether the purchaser purchased the item innocently and in good faith shall be on the purchaser. (f) An item forfeited under this section shall be disposed of at the discretion of the department. Before the department disposes of an aircraft it shall consider transfer of

ownership of the aircraft to the Alaska Wing, Civil Air Patrol.

AS 22.15.060. Criminal Jurisdiction. (a) The district court has jurisdiction (1) of the following crimes: (A) a misdemeanor

AS 22.20.022. Peremptory Disqualification of a Judge. (a) *If a party or a party's attorney in a district court action or a superior court action, civil or criminal, files an affidavit alleging under oath the belief that a fair and impartial trial cannot be obtained, the presiding district court or superior court judge, respectively, shall at once, and without requiring proof, assign the action to another judge* of the appropriate court in that district, or if there is none, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action.

FEDERAL RULES INVOLVED

Federal Rules of Criminal Procedure 7(c)(2) Criminal Forfeiture. No judgment of forfeiture may be entered in a criminal proceeding unless the indictment or the information provides notice that the defendant has an interest in property that is subject to forfeiture in accordance with the applicable statute.

Federal Rule of Criminal Procedure 32.2. Criminal Forfeiture (a) Notice to the Defendant. A court must not enter a judgment of forfeiture in a criminal proceeding unless the indictment or information contains notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute.

Federal Rule of Evidence 410 - Inadmissibility of Pleas, Plea Discussions, and Related Statements - Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions: (1) a plea of guilty which was later withdrawn; (2) a plea of nolo contendere; (3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

STATE RULES INVOLVED

Alaska Rule of Appellate Procedure 215 Sentence Appeal. (a) Appellate Review of Sentence. (2) *Defendant's Right to Appeal Sentence on Grounds Other Than Excessiveness.* A defendant may appeal a sentence of any length on grounds other than excessiveness, including but not limited to: illegality of the sentence; erroneous findings by the trial court that affect the statutory range of sentences to which the defendant is subject; and procedural errors in the sentencing proceeding. (3) *Prosecuting Authority's Right to Appeal Sentence.* The prosecuting authority may appeal a sentence of any length as provided in AS 22.07.020. (4) *Where Appeal is Taken.* An appeal

under subparagraphs (a)(1)-(3) must be taken to the court of appeals. (5) *Right to Seek Discretionary Review for Excessiveness. A defendant may seek discretionary review of an unsuspended sentence of imprisonment which isn't appealable under subparagraph (a)(1) by filing a petition for review in the supreme court under Appellate Rule 402.* A defendant who is filing a sentence petition and a sentence appeal, or a sentence petition and a merit appeal, must follow the procedure set out in paragraph (j).

(b) *Notification of Right to Seek Review of Sentence. At the time of imposition of any sentence of imprisonment, the judge shall inform the defendant (1) of the defendant's right to appeal or petition for review of the sentence under paragraph (a)*; (2) that the appellate court may reduce or increase the sentence, and that by appealing or petitioning for review of the sentence under this rule, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal or review the defendant has been twice placed in jeopardy for the same offense; and (3) that if the defendant wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent the defendant in an appeal or petition for review.

Alaska Rules of Appellate Procedure Rule 217. Appeals from District Court. (d) The appellant's brief shall be served and filed within 20 days after notice of the certification of the record has been served. *The appellee's brief shall be served and filed within 20 days after service of the brief of the appellant.* The appellant may serve and file a reply brief within 10 days after the service of the brief of the appellee.

Alaska Rule of Criminal Procedure 32.5 Appeal From Conviction or Sentence--Notification of Right to Appeal. *A*

person convicted of a crime after trial shall be advised by the judge or magistrate: (a) that the person has the right to appeal from the judgment of conviction within 30 days (or 15 days in appeals from the district court made under Appellate Rule 217) from the date shown in the clerk's certificate of distribution on the judgment appealed from by filing a notice of appeal with the clerk of the appellate courts; and (b) that if the defendant wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent the defendant on the appeal.

In addition, at the time of imposition of any sentence of imprisonment, the judge or magistrate shall advise the defendant as required by Appellate Rule 215(b). (Added by SCO 1136 effective July 15, 1993; amended by SCO 1184 effective July 15, 1995; and by SCO 1226 effective January 22, 1996)

Alaska Rule of Criminal Procedure 42(e). Motions: (1) If either party desires that an evidentiary hearing be held, that party shall request an evidentiary hearing on or before the date a reply is due. (3) *If material issues of fact are not presented in the pleadings, the court need not hold an evidentiary hearing.*

Alaska Rule of Evidence 410: Inadmissibility of Plea Discussions in Other Proceedings. (a) *Evidence ...of statements or agreements made in connection with any of the foregoing pleas or offers, isn't admissible in any civil or criminal action, case or proceeding against the government or an accused person who made the plea or offer if: (i) A plea discussion does not result in a plea of guilty or nolo contendere...***Commentary** To foster negotiations *the rule provides that nothing that is said during plea bargaining may be used against the accused in any proceeding, whether*

criminal, civil or administrative. Thus, the accused is free to discuss the case without resort to hypothetical statements of fact and without fear that a slip of the tongue may be devastating at a later trial or other proceeding.

FACTS

In the 1990's a very divisive controversy developed concerning wolf predation management in Alaska. Lawsuits, ballot initiatives, and propaganda eventually halted prior management. Resulting ungulate (moose, caribou, sheep, etc) decline led to severe shortages for human use, causing great hardship for those who depended on ungulates to put food on the table.

Pressure built and an experimental Wolf Control Program (WCP) to restore ungulates, limited to part of Game Management Unit (GMU) area 19D and authorizing aerial wolf shooting from October 2003 to March 2004, was implemented by the Alaska Board of Game (BOG). This seven-member board is governor appointed, legislature confirmed, and passes law managing wildlife. Opposition tried stopping this experiment – citing ineffectiveness.

On February 7, 2004 Master hunting guide Haeg and registered hunting guide Zellers were solicited by the SOA for a 19D WCP team. Haeg wasn't licensed to guide hunts in 19D *but was licensed in 19C, with a hunting lodge there.*

About February 28, 2004 a BOG member told Haeg:

> "In the first 4 months only 4 of the 55 wolves required have been taken; if more wolves aren't taken in the remaining 2 months the WCP may be judged ineffective and shut down for good; you must kill more wolves to prevent this; *if you end up taking wolves outside the area just mark their GPS coordinates as being taken inside the area."*

On March 26, 2004 Trooper Gibbens claimed finding evidence Haeg aerially shot wolves *"in 19C"*, also stating:

> "Based on my experience, there is a clear economic incentive for Haeg... to eliminate or reduce predators from this area, which could potentially increase numbers of trophy animals for [Haeg] to harvest with clients."

Gibbens GPS coordinates placed all evidence in 19D. From March 29 to April 2, 2004 the false 19C evidence location (and that Haeg had a hunting lodge in 19C) was used in all affidavits to obtain warrants seizing Haeg's property. Apx.U. Haeg was using the airplane and other equipment as primary means to provide a livelihood when seized. No postseizure hearing or notice of postseizure hearing was given. No notice was provided the SOA would seek property forfeiture and/or of statutes authorizing forfeiture. During seizure the SOA responded *"never"* when Haeg asked when he could get the property back because he needed it for his livelihood.

April 9, 2004 attorney Cole was hired and told Haeg:

> "Because of program harm the Governor will bring immense pressure on your [Haeg's] judge and prosecutor to make an example of you; *nothing can be done about the falsified evidence location*; a PA to hunting/guiding charges is best; you [Haeg] can't bring up the SOA encouraged you to take wolves outside the WCP area and then claim they had been taken inside; give up a year of guiding, statement, kill map, and fly in witnesses for a PA requiring a 1-year license loss."

Cole never told Haeg a hearing was available to protest being put out of business or that Haeg could bond property out, even after Haeg specifically asked; never told Haeg of forfeiture notice right, notice of forfeiture case, notice of statutes authorizing forfeiture, and/or items for forfeiture; and never told Haeg WCP law prevented hunting/guiding violations.

On April 23, 2004 Haeg provided the SOA an evidence location map and on June 11, 2004 a statement. *Prosecutor Leaders and Gibbens taped Haeg's testimony evidence location was 19D, not 19C.* Cole told them Haeg already gave up the PA guide year. On June 23, 2004 Zellers, after Haeg's implicating statement, cooperated and gave a statement. Leaders and Gibbens taped Zellers testimony evidence location was 19D, not 19C.

On November 4, 2004 an information was filed in accordance with the PA scheduled to be finalized in court on November 9, 2004. Apx.V. On November 8, 2004 Haeg sent the court and SOA a letter of his intended testimony the next day: That the SOA, to ensure success, encouraged him to take wolves outside the WCP area but claim they were taken inside; he had already given up a year guiding, statement, and cooperated in every way for the PA; and his actions did not help his business. Apx.W. On November 8, 2004 1 PM, just after letter receipt, Leaders filed an amended information violating the PA by increasing severity of charges and by using Haeg's PA statement. Apx.V. Although Haeg had already flown in PA witnesses from Illinois Cole said the only way to enforce the PA "was to call Leaders boss." The PA never concluded and Haeg wasn't allowed to testify about the SOA's WCP instructions or PA reliance. *On or after November 8, 2004 Haeg's*

written statement vanished from the official court record – yet proof documenting submission remained. Apx.X.

On November 11-22, 2004, during attorney/client meetings, Haeg taped Cole:

> "Leaders can use your statement against you; the only PA enforcement available is calling Leaders boss; it is legal and ethical for Leaders to break the PA after the statement and year guiding given for it; I can't piss Leaders off because I have be able to make deals with him in the future; you should be charged with hunting/guiding violations; the [SOA] encouraging you to take wolves outside the area and then to mark them inside isn't a defense; and there is no way to get property back prior to trial."

On December 3, 2004 Haeg fired Cole and on December 10, 2004 hired attorney Robinson, who stated:

> "The PA and everything given for it was a waste; your PA statement can be used against you; you can't bring up the SOA encouraged you to take wolves outside the WCP area and then claim they were taken inside; the false evidence locations can't be protested; you will lose at trial because Cole has given Leaders everything but I have no doubt we will win on appeal since the information wasn't supported by affidavit the court didn't have jurisdiction; *you must never tell the court of the PA or all you have done for it because this would admit you voluntarily submitted to jurisdiction;* go to

> trial *and don't put on evidence because it's a waste of money;* Zellers can testify against you."

Robinson never told Haeg due process required when business property is seized, deprived, or forfeited and never kept Leaders from using Haeg's statement.

On March 31, 2005 Robinson motioned Haeg couldn't be charged with hunting/guiding violations because WCP law prohibited this. Apx.Y. Robinson's May 6, 2005 reply, supported by Haeg's affidavit, claimed Leaders shouldn't use Haeg's statement in the information. Apx.Z. The DC May 9, 2005 denial, without knowledge of the false evidence locations, never addressed Haeg's statement use. Apx.E.

On May 17-18, 2005 Judge Murphy verbally granted the SOA's protection order:

> *Judge Murphy*: "[Y]ou [Robinson] can't argue as a matter of law he [Haeg] was not hunting." Apx.F.

At July 26-29, 2005 trial Robinson said because Haeg's statement was being used Haeg must testify to present favorable evidence. Robinson never revealed the SOA's case was based on false evidence locations. Leaders argued, unopposed, that since Haeg killing wolves where he guides benefited his business, Haeg be found guilty of hunting/guiding violations.

Leaders solicited and accepted Gibbens trial testimony the evidence was in 19C:

> Leaders, "Those wolf kills that you investigate there, they were where?" Gibbens, "19C"

Gibbens, immediately confronted on cross-examination at Haeg's insistence, admitted the evidence he just testified was in 19C was really in 19D.

> Gibbens, *"I'll correct that if you like. Those four kill sites are in the corner of 19D."*

Robinson told Haeg nothing could be done about Gibbens false testimony because the "good boy network of Troopers, prosecutors, and judges take care of their own."

On July 29, 2005 Haeg was convicted.

On August 24, 2005 the court allowed sentence enhancement because Haeg's failed PA required it. Apx.G.

Sentenced September 29-30, 2005. Haeg subpoena/plane ticketed Cole to sentencing. Apx.AA. Haeg typed up 56 questions for Robinson to ask Cole about the PA and what Cole told Haeg. Apx.BB. Cole didn't appear and Robinson told Haeg, "Nothing can be done".

> Leaders sentence argument was: "[T]he great economic benefit Haeg received from killing wolves where he guides."

The SOA testified they had no idea why Haeg gave up guiding the previous year.

Robinson refused to ask Zellers, Hilterbrand, Stepnosky (witnesses present when PA failed) or Haeg typed questions about Haeg's failed PA, Cole's advice,

reliance on the PA; why the PA failed; refused to question Leaders about Haeg's PA; and never revealed Leaders case was based upon Haeg's PA cooperation and upon evidence moved from 19D to 19C. No objection to the 2 AM sentencing and nothing of all already given for the failed PA – statement, year guiding, and witnesses flown in.

On September 29-30, 2005 Haeg was sentenced to 570 days jail, $19,500.00 fine, $100,000.00 property forfeiture, and 5-year license revocation (no credit for PA year). Apx.H. Judge Murphy's specific on-record sentence justification without stay:

> "[S]ince the majority if not all the wolves were taken in 19C – in the area where you were hunting".

No sentence appeal notification was given. Robinson said sentence couldn't be appealed and never protested justification or license revocation.

On October 14, 2005 Robinson filed points of appeal: court didn't have "subject matter jurisdiction". Apx.CC.

Robinson's taped conversations after sentencing:

> "No one will care about 2 AM sentencing when you couldn't think straight; Gibbens and Leaders weren't charged with perjury because of the fold...the old boy system - the group they protect and don't do anything against...made up of prosecutors, cops, judges, and magistrates; Murphy lied and was a law enforcement type of judge and she's not the independent, judiciary type that

you're suppose to have; Cole didn't appear because his testimony wasn't relevant to your guilt (Haeg, "I was already found guilty and subpoenaed Cole to my *sentencing* to minimize my sentence with all I did far a PA I never got"); nothing other than subject-matter jurisdiction is worth appealing; you couldn't sue anyone until your conviction is reversed."

In February 2006 Haeg fired Robinson and found documentation in Robinson's file that Cole never intended on obeying subpoena to sentencing. Apx.DD.

About March 15, 2006 Haeg contacted attorney Osterman and tape-recorded everything. After file review Osterman stated:

> "Cole and Robinson sold you out to the SOA; Leaders and Gibbens committing perjury to falsify evidence locations must be raised on appeal; you didn't know they [you own attorneys] were goanna set it up so that their [the State's] dang dice was always loaded...they were always goanna win; the COA will reverse when they see the sellout; how come no one tried to enforce the PA; need to bring up all you did for the PA; we need to bring up they used your statement; they [Cole and Robinson] conspired to keep Cole from testifying; what Leaders did was stomped on your head with boots. He went way, way, way to far and he violated all the rules that would normally apply and your attorneys allowed him, at that time, to commit these violations; a motion to

suppress [evidence] would've succeeded; [Haeg's] is the strangest damn case I've ever seen - I mean talk about a pile up here - this is a pile up man...I'm standing there going what the hell happened here?"

On March 20, 2006 Haeg hired Osterman.

Weeks after being hired Osterman stated:

"We can't use the false [evidence] location because the COA wouldn't be willing to give you that much justice; the SOA not having evidence might be worse for you; the COA will tell you go to hell, laugh like hell, and throw out your appeal if you complain about the moved evidence; you shouldn't find out why they [Cole and Robinson] sold you out because they might have had a valid reason; if you attempt to expose the sell out your appeal will be thrown out; it wasn't wrong he [Cole] didn't make it to your sentencing; Robinson is the old he-wolf that basically runs things around here...has lots of political pull... and heads up the criminal section of the Bar; I didn't use the perjury because judges don't care; nothing is there [briefed] of the sellout because we're appealing the merits – not dissatisfaction with your other lawyers; nobody cares attorneys lie to clients; proving they [Haeg's attorneys and SOA] conspired isn't goanna help you; if you fire me the COA will never let you represent yourself; the COA could give a shit less that you gave up a years guiding and statement for a PA they

broke; I'm not putting anything in the brief that will affect their [Cole and Robinson] lives; I'm not goanna get them [Cole and Robinson] to go to prison; it was time you realized this might be a life-changing event and to try to fix the errors and not have it change life was very dangerous; the issues we raised on appeal – *it may not be there per se.*"

Haeg fired Osterman on May 23, 2006.

Haeg filed fee arbitration against Cole, who testified April 12 – July 12, 2006:

> "You had no right to a prompt post-seizure hearing; the law doesn't allow seized property to be bonded out; your statement wasn't used; I told you I could file a motion to enforce the PA; you didn't want to enforce the PA because it would cost a lot of money; you didn't want to risk enforcing the PA; there was no PA; I didn't tell him [Haeg] about suppressing evidence because I didn't think it was a good idea; I didn't testify [at Haeg's sentencing] because I wouldn't be a good witness; the Governor would've brought immense pressure on [Haeg's] judge and prosecutor to make an example of him."

Cole didn't dispute testimony he couldn't enforce the PA because he "needed to be able to make deals with the prosecution" after Haeg's case.

Witnesses present when the PA failed testified Cole said the PA couldn't be enforced other then "calling Leaders

boss" and that he "couldn't piss Leaders off"; Haeg wanted the PA enforced at any cost or risk. Zellers testified he cooperated and gave a statement because Haeg's PA statement implicated him.

> *Haeg*: "If Brent Cole had not had me give my statement to the prosecution would you have ever done so?"
>
> *Zellers under oath*: "No."
>
> *ABA arbitrator Metzger*, "You decided to cooperate with law enforcement authorities. Is that right?"
>
> *Zellers under oath*: "Based on the fact that Mr. Haeg had already cooperated with the law enforcement."

Cole's one witness, Fitzgerald, testified neither Haeg's nor Zellers statements were used; Zellers cooperated and gave a statement because of Haeg's PA statement.

> Haeg: "Would you have had Tony Zellers give a statement to prosecution ... if Brent Cole had not have me first give a statement implicating Tony?"
>
> Fitzgerald: "[C]ertainly the fact that you had already gone to the State was a factor in the decision made with regard to whether Mr. Zeller's was goanna follow suit."

Fitzgerald's prior testimony at Zellers January 13, 2005 sentencing:

> "[H]ad it not been for the cooperation, frankly of both Mr. Zellers and Mr. Haeg, there would have been additional holes in the case and my understanding is that their cooperation provided information to the State concerning at least 5 of the 9 wolves at issue. [T]he government was free to do whatever it was goanna do with that information and as is demonstrated they used it to charge additional charges against both Mr. Zellers and Mr. Haeg..."

On May 24, 2006 Haeg filed to represent himself and on June 21, 2006 COA remanded for DC hearing. Magistrate Woodmancy was assigned. On June 26 and June 30, 2006, citing apparent bias, Haeg filed affidavits to recuse him to no effect. Apx.EE.

At Haeg's August 15, 2006 representation hearing Osterman testified Cole and Robinson didn't act in Haeg's interest or direction; he could see why Haeg thought there was a conspiracy to harm him; what Cole and Robinson did to represent Haeg was wrong; and he wouldn't do anything that would affect Cole and Robinson. Apx.FF.

After ruling Haeg had delusions of conspiracy, the DC ordered psychiatric evaluation before allowing self-representation. On August 24, 2006 Dr. Tamara Russell, a leading psychologist, determined there was almost certainly a conspiracy between Haeg's attorneys and the SOA to deprive Haeg of a fair trial. Apx.GG. On September 18, 2006 the SOA filed a 14-page *opposition* to Haeg representing himself. Apx.HH. On October 5, 2006 DC granted self-representation.

Haeg immediately filed numerous motions for return of property, to stay appeal pending PCR, to correct illegal sentence, to stay license suspension/revocation and to supplement record. Apx.II. COA denied or refused to address all. Apx.A, J, K, & O.

On February 5, 2007 COA remanded to DC for return of property/statutes unconstitutional hearing – only after Haeg stated since no hearing was being provided he would just physically go get his property back from impound. On March 13, 2007 DC denied allowing witness confrontation, witness or evidence presentation, and/or oral argument during Haeg's hearing. Apx.L. On April 12, 2007 COA denied Haeg's Petition for Review of DC denial of effective hearing Apx.M and on May 25, 2007 the ASC denied Haeg's Petition for Hearing of the DC denial. Apx.N.

On July 23, 2007 the DC denied Haeg the return of property and ruled statutes were constitutional. Apx.P. On August 17, 2007 DC denied Rehearing. Apx.Q. Haeg appealed and the COA combined this appeal (A-10015) with his criminal appeal (A-9455).

About February 26, 2008 Jackie Haeg found Haeg's PA statement, submitted November 8, 2004, *was missing from the official record while paperwork documenting submission remained.* Apx.X. On March 7, 2008 Haeg emergency motioned the record be reconstructed before his reply brief was due on March 17, 2008. On March 26, 2008, *after Haeg's reply brief was already submitted,* the COA reconstructed the record. Apx.R.

On September 10, 2008 the COA rendered adverse judgment in A-9455/A-10015. Apx.A. On September 26, 2008 they denied Petition for Rehearing. Apx.C. On

December 1, 2008 the ASC denied Haeg's Petition for Hearing. Apx.D. On December 2, 2008 the SOA asked Haeg be immediately incarcerated, regardless if he wished to appeal to the United States Supreme Court. On January 26, 2009 the SOA presented evidence Haeg had no right to ask for review by the Supreme Court, his chance of being heard by the Supreme Court was very low, Haeg's appeal was years old and punishment was overdue, and there was no limit on how long Haeg could wait to ask for review. Haeg argued Ak Appellate Rule 206(a)(1) required imprisonment be stayed, he had a right to ask for review no matter what the odds were the Supreme Court would hear him, and Supreme Court Rules 13 and 15 placed specific time limits for him to ask for review. Haeg was ordered to prison on March 2, 2009, over his objections that since he represented himself he would be unable to effectively file his petition, motions, corrections, or replies. Apx.S. The Court refused Haeg's request specific reasons be given for denying stay. On January 30, 2009, four months after oral arguments and just four days after Haeg was ordered to jail the ASC issued an adverse decision in Haeg's arbitration appeal. Apx.T.

ARGUMENT

Questions (1) and (9): It's unconstitutional for Haeg's conviction and property seizure/forfeiture to be obtained using affidavits and testimony known to be false by the SOA - falsifying evidence locations from 19D to 19C. Apx.U. Twice Leaders and Gibbens taped themselves being told (during Haeg/Zellers PA statements) the affidavits were false – that the evidence was located in 19D and not in 19C. Gibbens GPS coordinates proved this. Yet Gibbens, with Leaders solicitation and acceptance, later testified at trial the evidence was found in 19C:

> Leaders, "Those wolf kills that you investigate there, they were where?" Gibbens, "19C"

Gibbens, immediately confronted on cross-examination, admitted the evidence he just testified was in 19C was really in 19D.

> Gibbens, *"I'll correct that if you like. Those four kill sites are in the corner of 19D."*

The SOA knowingly presented false testimony to Haeg's judge and jury, the same false testimony on all affidavits seizing Haeg's property, which was then used as evidence and forfeited.

This false testimony is material because Leaders justification for hunting/guiding instead of WCP violations was "Haeg's intent through the taking of was an intent to eliminate wolves that directly preyed upon the game populations that he hunted in order to better enhance is prospects as a guide." If Haeg wasn't killing wolves where he guided any intent to benefit his hunting business vanished. Judge Murphy, totally ignorant the locations were false, issued the seizure warrants, on May 9, 2005 ruled charges be hunting/guiding instead of WCP, and on May 18, 2005 even ruled Haeg *could not* argue because of WCP law he wasn't hunting:

> *"You can't argue as a matter of law he was not hunting."*

WCP convictions were limited to a $5000 fine and couldn't affect Haeg's business as 5AAC 92.039(h) and 5 AAC 92.110(m) specifically excluded WCP violations from hunting/guiding violations:

5 AAC 92.039(h) In accordance with AS 16.05.783, the methods and means authorized in a permit issued under this section are independent of all other methods and means restrictions in AS 16 and this title. (*AS 16 includes all hunting*). 5 AAC 92.110(m) A wolf population reduction or wolf population regulation program established under this section is independent of, and does not apply to, *hunting* and trapping authorized in 5 AAC 84 - 5 AAC 85.

Haeg's conviction of AS 8.54.720(a)(15), a guide hunting same day airborne, was incredibly more severe:

AS 8.54.720(a)(15) person licensed under this chapter to knowingly violate a state statute or regulation prohibiting waste of a wild food animal or *hunting on the same day airborne;*(d) In addition to a disciplinary sanction imposed under AS 08.54.710, a person who commits an offense set out in (a)(15) of this section is guilty, *(1) for a first offense, of a misdemeanor and is punishable by a fine of not more than $30,000 or by imprisonment up to one year, or both; (2) for a second or subsequent offense, of a class C felony.* (f) In addition to the penalties set out in (b) - (e) of this section and a disciplinary sanction imposed under AS 08.54.710, *(3) the court shall order the department to suspend the guide license or transporter license for a specified period of not less than three years, or to permanently revoke the guide license or transporter license, of a*

person who commits an offense set out in (a)(15) or (16) of this section.

License loss destroyed the business and life Haeg and wife worked their whole lives for.

Compelling evidence of the pervasive taint/fruit of the poisonous tree the false testimony and affidavits had is Judge Murphy's specific on record justification for Haeg's severe sentence:

> "[S]ince the majority if not all the wolves were taken in 19C... to kill the wolves in the area where you were hunting."

This was after Gibbens had testified under oath to Judge Murphy this was completely false.

How can Haeg's conviction and sentence be constitutional when not a single wolf was taken where Haeg hunted?

Convictions obtained by false testimony known to the State violate the 14th Amendment. The SOA itself knowingly testified falsely in Haeg's case and both the prosecutor who elicited the testimony and the Trooper who gave it knew it was false when given. Prejudice is proven by Judge Murphy's sentence justification.

> Mesarosh v. U.S., 352 U.S. 1 (1956) "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony...the government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them."

Mooney v. Holohan, 294 U.S. 103 (1935)" Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured..."

Napue v. Illinois, 360 U.S. 264 (1959) "Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process... "

Property and evidence obtained by a state with false affidavits is also unconstitutional.

Mapp v. Ohio, 367 U.S. 643 (1961) "[A]ll evidence obtained by searches and seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state."

Olmstead v. U.S., 277 U.S. 438, 485 (1928) Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise."

> U.S. v. Hunt, 496 F.2d 888 (5th 1974) "If affiant intentionally makes false statements to mislead judicial officer on application for search warrant, falsehoods render warrant invalid whether or not statements are material to establishing probable cause."

Question (2): It's unconstitutional for Haeg's property (including airplane), used as his primary means to provide a livelihood during a short yearly season, was seized, deprived, and forfeited without a prompt postseizure hearing, notice of a prompt postseizure hearing, or even notice of a prompt postseizure opportunity to bond out. This error was magnified by:

1. The affidavits used contained devastating false statements.

2. Haeg and wife had no other livelihood.

3. Their short season started the day of seizure.

4. The property seized was irreplaceable.

5. Haeg asked, as the property was being seized: "When can I get my plane back? I have clients coming in tomorrow and I have to set up bear camp." SOA: "*Never*"

This left Haeg believing there was no opportunity to protest being put out of business, or to contest the false warrants, before charges, conviction, or sentence.

6. It was 8 months before Haeg was charged, 16 months before trial, and 18 months before sentence.

Waiste v. State 10 P.3d 1141 (Ak 2000); "[T]*his court's dicta, however, and the persuasive weight of federal law, both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing.* [D]ue process mandates heightened solicitude when someone is deprived of her or his primary source of income. *[G]iven the conceded requirement of a prompt postseizure hearing on the same issues, in the same forum, "within days, if not hours," the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for a seizure a few days or hours earlier."* An ensemble of procedural rules bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors. The rules include the need... *to allow release of the vessel on bond,* and to afford a prompt postseizure hearing.

County of Nassau v. Canavan, 2003 N.Y. Int. 0139 (Nov. 24, 2003). While we disagree that due process mandates a hearing prior to the initial seizure, *we conclude that a prompt post-seizure hearing is required in all cases.*

See also Krimstock v. Kelly, 306 F.3d 40 (2d Cir. 2002); Kelly v. Krimstock, 539 U.S. 969 (2d Cir. 2003); Memphis Light, Gas and Water Div. v. Craft, 436 US 1 (1978); Cleveland Bd. of Educ. V. Loudermill, 470 U.S. 532 (1985); Mathews v. Eldridge, 424 U.S. 319 (1976); Fusari v. Steinberg, 419 U.

S. 379, 419 U. S. 389 (1975); Mullane v. Central Hanover Tr. Co. 339 U.S. 306 (1950); and Goss v. Lopez, 419 U.S. 565 (1975).

Due process required a prompt postseizure hearing (or at least notice of such a hearing) be held when Haeg's property, used as his primary means to provide a livelihood, was seized.

Question (3): It's unconstitutional that Haeg's property was forfeited without notice in any charging information the SOA would seek to forfeit property and/or without notice Haeg had an interest in property that was subject to forfeiture in accordance with the applicable statute. Apx.V.

> Fuentes v. Shevin, 92 S. Ct. 1983, 407 U.S. 67 "*'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified.'* ... It is equally fundamental that the right to notice and an opportunity to be heard *'must be granted at a meaningful time and in a meaningful manner.'"*
>
> U.S. v. Hall, 521 F.2d 406 (9th Cir. 06/18/1975) [T]*he court's actions, taken together, deprived Hall of the mandatory notice to which he was entitled and the concomitant opportunity to defend against a forfeiture."*
>
> U.S. v Seifuddin, 820 F.2d 1074, 1076 (9th Cir. 1987) "'Criminal' forfeitures are subject to all the constitutional and statutory

procedural safeguards available under criminal law. The forfeiture case and the criminal case are tried together. *The forfeiture counts must be included in the indictment of the defendant...*"

Wiren v. Eide, 542 F.2d 757 (9th Cir. 1976) *"Where the property was forfeited without constitutionally adequate notice to the claimant, the courts must provide relief..."*

Federal Rules of Criminal Procedure 7(c)(2) Criminal Forfeiture. *No judgment of forfeiture may be entered in a criminal proceeding unless...the information provides notice that the defendant has an interest in property that is subject to forfeiture in accordance with the applicable statute.*

Federal Rule of Criminal Procedure 32.2. Criminal Forfeiture (a) Notice to the Defendant. *A court must not enter a judgment of forfeiture in a criminal proceeding unless the ...information contains notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute.*

Haeg received constitutionally inadequate notice before forfeiture.

Question (4): Alaska Statutes *12.35.020, 12.35.025, 16.05.190, 16.05.195, 8.54.720; Alaska Administrative Codes 5 AAC 92.140 and 5 AAC 84.270;* and Alaska Rules of Criminal Procedure are

unconstitutional because Haeg didn't receive a prompt postseizure hearing or notice of such a hearing and the statutes/rules/codes didn't require this or notice before forfeiture that Haeg's property may be forfeited.

> Von Neumann v. U.S. 660 F.2d 1319 (1981): See Lee v. Thornton, 538 F.2d 27, 31 (2d Cir. 1976) This court expressly relied on the Lee rationale to invalidate a California towing and possessory lien statute in Stypmann v. City and County of San Francisco, 557 F.2d 1338 (9th Cir. 1977). The court held that this statute couldn't withstand a due process attack because it didn't provide for a prompt post-seizure hearing to determine probable cause for the seizure.
>
> Jennings v. Mahoney, 404 U.S. 25, 92 S.Ct. 180, 30 L.Ed.2d 146 (1971); Wiren v. Eide, 542 F.2d 757 (9th Cir. 1976). [H]eld that a person whose driver's license was summarily suspended by an administrative agency couldn't challenge the validity of the applicable statute, even though the statute's constitutionality presented a "substantial question," *where the license suspension had been stayed pending completion of judicial review.*

Because Haeg wasn't informed of his right to hearing he never had a chance to protest or bond his property out 8 months before he was charged, 16 months before he was convicted, or 18 months before he was sentenced. Because there wasn't a hearing, false evidence locations went on unaddressed to destroy Haeg's livelihood. Finally, Haeg

never had constitutionally adequate notice the SOA would seek property forfeiture – so he could prepare a defense.

Questions (5) and (6): Its unconstitutional for the SOA to break Haeg's PA with no explanation or justification and/or after Haeg's following detrimental reliance:

1. 5-hour statement and its evidence. Apx.V, FF.

2. Entire year guiding given up. Apx.W, FF.

3. Witnesses flown in from Illinois unable to testify. Apx.

The SOA broke the PA by filing an amended information changing the already filed AS 8.54.720(a)(8)(A) charges to AS 8.54.720(a)(15)(A). Apx.V. The new charges required a minimum 3-year license suspension to permanent revocation while the PA and original charges required 1-year suspension. The SOA amended charges on November 8, 2004 at 1 PM and months earlier the PA had been scheduled for finalization in court on the morning of November 9, 2004.

It's unconstitutional to allow the SOA to break a PA after such detrimental reliance.

> U.S. v. Garcia, 519 F.2d 1343 (9th Circuit 1975): "The indictment upon which Garcia's convictions are based was obtained in violation of the express terms of the agreement and is therefore invalid. The upholding of the Government's integrity allows for no other conclusion."

U.S. v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974) "[W]hen the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the defendant be prejudiced as a result of that reliance."

Stolt-Nielsen, 442 F.3d 177 (3d Cir. 2006): "Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements—to the extent the agreements require defendants to sacrifice constitutional rights.

Reed v. Becka (1999) 333 S.C. 676 [511 S.E.2d 396, 403]. [D]efendant who provides beneficial information to law enforcement can be said to have relied to his detriment.

It's unconstitutional for the SOA, without explanation or justification, to increase severity of already filed charges.

United States v. Motley, 655 F.2d 186 (9th Cir. 1981): If the government increases the severity of the charges following a defendant's exercise of a procedural right, the sequence of events gives rise to an appearance of vindictiveness, shifting the burden to the government to prove that the decision to re-indict with more severe charges didn't result from any vindictive motive. "Instead, the prosecutor, to rebut the presumption, must show his decision to re-indict with more severe charges was

'justified by independent reasons or intervening circumstances which dispel the appearance of vindictiveness.'"

Atchak v. State, 640 P.2d 135 (Ak 1981): (O)nce a prosecutor exercises his discretion to bring certain charges against the defendant, neither he nor his successor may, without explanation, increase the number of or severity of those charges in circumstances which suggest that the increase is retaliation for the defendant's assertion of statutory or constitutional rights. The Alaska Supreme Court has consistently held that courts shouldn't hesitate to reverse a conviction when a substantial flaw in the underlying indictment is found, regardless of the strength of the evidence against the accused or the fairness of the trial leading to the conviction.

Question (7): It's unconstitutional to have properly admitted material evidence removed from the official court record. On November 8, 2004 Haeg submitted a 15-page statement to the court and SOA to familiarize the court with his PA testimony the next morning. Apx.W. This statement evidenced Haeg, for the PA, had:

"[A]*ssisted the Troopers in every way possible during their investigation... including rushing a map with kill locations to Mr. Leaders ASAP at his request; had given up guiding and this represented both Haeg and his wife's income;* and [the seized

plane] *is the backbone of my ability to provide for my family.*"

This statement also evidenced just before WCP participation Haeg had been told by Alaska Department of Fish and Game and BOG that:

> "[T]he WCP might be terminated if more wolves were not killed; there was a big concern that since so few wolves had been taken in the previous 4 months the program would be seen as a failure and terminated; couldn't believe people were not poisoning the wolves out there and went on to explain exactly the poison that works best and how to obtain it; it is much more important for a pilot as good as you to be out killing wolves than to be here testifying at this meeting; *that I was told by a current Board of Game member that if we shot wolves outside the area to just report that they were taken inside the area.*; *that I felt under pressure to make the program a success*; and *I was feeling immense pressure from all sides to kill wolves.*"

In March 2008 Haeg's file was transferred to Kenai for his appeal use. About February 26, 2008 Jackie Haeg found the statement *was missing from the official record while paperwork documenting submission remained.* Apx.X. Haeg emergency motioned the record be reconstructed before his reply brief was due on March 17, 2008. On March 26, 2008, *only after Haeg's reply brief was already submitted,* the COA reconstructed the record. Apx.R. In other words admitted and compelling evidence, that Haeg's actions and intent at the BOG's urging were to

benefit the WCP, was likely removed from the record before Haeg's trial and sentencing and wasn't corrected even in time for Haeg's appeal use. And justification for hunting/guiding charges, conviction, and sentence was Haeg's actions and intent was to benefit his hunting/guiding business.

Because the SOA amended the information literally hours after receipt and before Haeg's testimony, no hint of the State's impropriety ever appeared, remained (after the letter disappeared), or was litigated. The SOA's actions prior to Haeg's WCP participation and during plea negotiations were never publicized – when animal rights activists were looking for anything to stop the WCP. The letter disappearance, combined with false evidence locations and Haeg's attorneys' refusals to bring any of this up, make a devastating injustice.

Question (8): It's unconstitutional for Haeg's PA statement and agreements, after PA failure, to be used against him. The PA required Haeg's statement. Leaders sworn grievance response:

> "It is true that part of plea negotiations with both Haeg and his codefendant Tony Zellers required each of them to provide truthful statements about their violations. Both Haeg and Zellers provided these interviews."

Zellers, because Haeg's statement implicated him, cooperated and gave a statement:

> *Haeg*: "If Brent Cole had not had me give my statement to the prosecution would you have ever done so?"

Zellers under oath: "No."

ABA arbitrator Metzger, "You decided to cooperate with law enforcement authorities. Is that right?"

Zellers under oath: "Based on the fact that Mr. Haeg had already cooperated with the law enforcement."

After PA failure Leaders used 5 pages of Haeg's statement in Haeg's *trial* information, starting with:

> "*David S. Haeg was interviewed in Anchorage on 6/11/04* and Tony R. Zellers was interviewed in Anchorage on 6/23/04. During the interviews the timelines and events given were almost identical, *and a summary of the statements of the two men follows:*"

Without Haeg's statement there was *no* probable cause for over half the charges and little for the rest. *Alaska Rule of Evidence 410* and its commentary are clear no use of Haeg's PA statement was allowed after no PA was completed. See also *Federal Rule of Evidence 410*.

On May 6, 2005 Robinson protested statement use:

> "At the time the first amended information was filed there was no plea between defendant and the state. As is revealed in Mr. Haeg's affidavit, there were plea negotiations that took place between the parties before the filing of the information

but the parties failed to carry out any PA. During the plea negotiations defendants made statements to the police that were recited by the prosecutor in his statement in support of the amended information.

The significance of this fact is that defendant's statements made during plea negotiations that do not end in a PA are not usable in any judicial proceeding, including the filing of an information (See Evidence Rule 410). Yet the prosecutor used these statements in support of all three informations [SOA issued second amended information to fix a typo in the first amended information] in violation of the evidence rule." Apx.Z.

On May 6, 2005 Robinson had Haeg sign and submit a court affidavit that states:

"1. I am defendant in the above captioned case. I have personal knowledge of the matters stated in this affidavit.

2. From June 2004 to November 2004 I was engaged in plea negotiations with the State's prosecutor Mr. Leaders concerning the filing of state game charges against me.

3. The plea negotiations came to an end on November 8, 2004. The prosecutor, at the last minute, back out of an agreement I thought was reached. The negotiations ended without a PA between myself and the state. The

prosecutor thereafter filed an amended information

4. I appeared in court on November 9, 2004, for arraignment on the amended information that charges me with numerous violations of state game laws. I pleaded not guilty to all of the charges. The court scheduled a jury trial for me to stand trial on the charges.

5. During the plea negotiations, I gave statements to the police regarding accusations of game violations that are in the statements in support of the three informations filed by the prosecutor in my case. These statements from the prosecutor are used to establish probable cause that I committed the crimes alleged in the informations. Without a plea agreement between me and the State these statements shouldn't be used to establish cause to believe I committed any of the crimes charged." Apx.Z.

The court never ruled on this protest of PA statement use in its May 9, 2005 order. Apx.E.

During the August 24, 2005 status hearing the PA was also used to "enhance" Haeg's sentence:

Leaders "[I]t became an issue in negotiation, prior to Mr. Robinson being involved, and we just maintained that position... if convicted of the wolf offenses we would use it as to enhance sentence."

Robinson "I don't know how that could be part of any negotiations to the un-negotiated case."

Judge Murphy "Well it was at one point."

Robinson "Well it wasn't on the charges that he went to trial on which was -you know- the charges that you said were different and that he plead not guilty to. So there's no agreement to that."

Haeg's sentence was then "enhanced" after conviction of severe charges because of a PA promising minor charges Haeg never received.

4. The SOA, at Haeg's August 15, 2006 pro se hearing, admitted they used Haeg's statement at trial. Apx.FF.

Their September 8, 2006 opposition *during appeal* used it:

"In June 2004 both hunters were interviewed by the troopers and admitted they knew nine wolves were shot from the airplane while outside the permit area."

This was after statement use was an issue on appeal.

Overwhelming caselaw holds states cannot offer a PA to get a statement, and then, after PA failure, use the statement to prosecute. Allowing this would render the right against self-incrimination nearly meaningless.

Kastigar v. United States (1972) 406 US 441, 453 "[Use and derivative use immunity] prohibits the prosecutorial authorities from using the compelled testimony in *any*

respect, and it therefore insures that the testimony cannot lead to the infliction of criminal penalties on the witness."

Counselman v. Hitchcock (1892) 142 US 547, 564 "This total prohibition on use provides a comprehensive safeguard, barring the use of compelled testimony as an 'investigatory lead' also barring the use of any evidence obtained by focusing investigation on a witness as a result of his compelled disclosures."

Daly v. Superior Court (1977) 19 Cal.3d 132, 145 "[T]he very existence of such testimony may present serious problems of proving its complete independence from evidence introduced in the criminal proceeding."

Leaders, in a sworn grievance response:

"Haeg is also mistaken in his belief that I wrongly used information obtained during plea negotiations to prosecute him in his criminal case. *It is true that part of the plea negotiations with both Haeg and his codefendant Tony Zellers required each of them to provide truthful statements about their violations. Both Haeg and Zellers provided these interviews.*

Because the information obtained from each of the defendants was essentially identical, it is understandable that Haeg believes that his statement given as part of plea negotiations was wrongly used against

him. However, this wasn't the case, the State relied on the information obtained from Zellers in prosecuting Haeg."

Yet Leaders information taking Haeg to *trial* stated:

> "*David S. Haeg was interviewed in Anchorage on 6/11/04* and Tony R. Zellers was interviewed in Anchorage on 6/23/04. During the interviews the timelines and events given were almost identical, and *a summary of the statements of the two men follows... During their interviews, Haeg and Zellers pointed out the location of the kill on a map... During their interviews, both Haeg and Zellers admitted that they knew that the wolves they shot from the airplane were outside the permit area when they were shot.*" Apx.V.

Leaders own charging information proves Haeg's PA statement was "wrongly used" and, to Haeg, seems Leaders committed perjury in his sworn grievance response.

Question (10): Its unconstitutional for the SOA to knowingly use their false testimony that they didn't know why Haeg had given up guiding before conviction and/or for Haeg to not receive credit for the year guiding given for a PA. Leaders solicited and accepted Gibbens sentencing testimony the SOA didn't know why Haeg didn't guide:

> "The only hunting period that he opted not to guide would be that fall, '04, *for whatever reason that was.*"

On September 29-30, 2005 Judge Murphy sentenced Haeg to a 5-year license revocation, without credit for the year already given for the PA. Apx.H.

Leaders agreed to give Haeg credit for the year guiding given before the court approved the PA, just as he promised and provided Zellers:

> Leaders sworn grievance testimony:
>
> *Leaders: "[T]he agreement called for a year suspension of Haeg's guide license"*
>
> Cole's arbitration testimony:
> *Cole*: I don't think he [Leaders] gave him [Haeg] credit for the year he got off. So he [Haeg] effectively got 6 years.
>
> *Shaw:* Have you had cases in which judges made the license suspension retroactive...
>
> *Cole:* Oh yeah.
>
> *Shaw:* ... to a date when somebody voluntarily stopped hunting?
>
> *Cole: And he [Leaders] was goanna do it in this case too.*

In addition to *Mesarosh v. U.S.; Napue v. Illinois; Mooney v. Holohan; and Giles v. Maryland;* supra, which prohibit states from knowingly using false testimony, the right against double jeopardy prohibits a defendant from paying twice for the same crime.

> North Carolina v. Pearce, 395 U.S. 711 (1969) "[T]he Constitution was designed as much to prevent the criminal from being twice punished for the same offence as from being twice tried for it. *We hold that the constitutional guarantee against multiple punishments for the same offense absolutely requires that punishment already exacted must be fully "credited" in imposing sentence..."*

Also disturbing - if Haeg already paid for lesser charges how could he be convicted of, and sentenced for, harsher charges?

Question (11): Its unconstitutional for Cole's to fail to appear in response to a subpoena, airline ticket, and hotel reservation and/or for Robinson to tell Haeg nothing could be done about it. Haeg demanded Robinson subpoena Cole to Haeg's sentencing so he could be asked 56 questions, typed and given to Robinson, about the PA and all Haeg had paid for it. Apx.BB. After subpoena, airline ticket, hotel room, and witness fees were paid/delivered Cole failed to appear. Apx.AA. Robinson told Haeg, "Nothing can be done."

After firing Robinson and inspecting his file, Haeg found documentation proving Cole never intended on testifying. This was even copied to the court Apx.JJ. Yet Cole was never compelled to testify.

Haeg had a constitutional right to compel witnesses in his favor. Because Cole didn't appear the court was never informed of Haeg's detrimental reliance before the SOA broke the PA and/or Cole falsely told Haeg the only enforcement was "calling Leaders boss". Haeg never got

credit for the year already given for the PA or for his statement, without which there was no probable cause for over half the charges. Haeg was sentenced to nearly 2 years in jail, $19,500 fine, $100,000 forfeiture, $4500 restitution, and 5-year license revocation, effectively making a 6-year revocation.

<u>Question (12)</u>: Its unconstitutional for Judge Murphy to specifically justify Haeg's sentence with false testimony knowingly presented by the SOA; to sentence Haeg to punishment not allowed by law; and to fail to inform Haeg of his right to appeal his sentence.

> Judge Murphy's on-record sentence justification: "[S]ince the majority if not all the wolves were taken in 19C – in the area where you were hunting"

This was the falsehood presented by the SOA to Judge Murphy on all search warrant affidavits, during Gibbens trial testimony, and afterward admitted by the SOA to be false. *And if Judge Murphy specifically used the false testimony as sentence justification, what was the jury's justification for conviction?*

Judge Murphy sentenced Haeg to a 5-year *revocation* of his guide license when the law allowed license revocation only if for life. See AS 8.54.720(a)(15). Revocation caused a $100,000 hunting camp loss because the federal landowner told Haeg to remove them since his license was revoked instead of suspended. A revoked license meant Haeg didn't have the license required for camp existence while a suspended license meant Haeg still had the required license.

Judge Murphy also failed to give the required notice Haeg could appeal his sentence. Apx.H.

See *Alaska Rule of Criminal Procedure 32.5 and Alaska Rule of Appellate Procedure 215 (b)*

Not appealing his sentence devastated Haeg. He lost $100,000 in hunting camps, never received credit for the year guiding given for a PA, and never got to compel Cole's testimony of PA injustice, violating due process and the equal protection of the law.

QUESTION (13): It's unconstitutional that Haeg be convicted of charges filed because activities under the WCP was governed by title 16 and/or was "hunting".

September 10, 2008 COA final judgment:

> "Why we conclude that Haeg could be convicted of unlawful acts by a guide: hunting same day airborne.
>
> Under the definition codified in AS 16.05.940(21), the term "hunting" isn't confined to the killing of animals for food or sport. Rather, "hunting" is defined as "[and] taking of game under AS16.05 – As16.40 and the regulations adopted under those chapters [of the Alaska Statutes]." The term "taking of game" includes more than simply the killing of game. As defined in AS 16.05.940(34), "take" means the "taking, pursuing, hunting...disturbing, capturing, or killing [of] game," as well as any attempt to engage in these acts."

> The predator control program that Haeg participated in was established under 5 AAC 92.110 – 125; these regulations were adopted by the Board of Game under Title 16, Chapter 5. Thus, Haeg's chasing and killing of wolves under this predator control program constituted "hunting" under Alaska law.
>
> *For these reasons, Haeg could lawfully be convicted of violating AS 08.54.72(a)(15), the statute that makes it a crime for a licensed guide to knowingly violate a statute or regulation that prohibits same-day airborne hunting."* Apx.A.

This ruling is in direct conflict with Alaska law and thus unconstitutional. Haeg was issued a WCP permit under 5AAC 92.039 [Chapter 5 of Title 16]:

> 5 AAC 92.039. Permit for taking wolves using aircraft (h) *In accordance with AS 16.05.783, the methods and means authorized in a permit issued under this section are independent of all other methods and means restrictions in AS 16 and this title[Chapter 5].* [AS 16 covers all hunting]

This law specifically states permit methods and means "*are independent of all other methods and means restrictions in AS 16 and Chapter 5".* How can the COA rule Haeg, while "under" the permit, *was subject to the methods and means restrictions in AS 16 and Chapter 5?* And that because of this he "could lawfully be convicted of violating AS 08.54.72(a)(15), the statute that makes it a crime for a licensed guide to knowingly violate a statute or regulation that prohibits same-day airborne hunting"?

It is clear WCP permittees are not "hunting". It is clear the DC was wrong in its May 17-18, 2005 order that *Haeg could not argue at trial he was not "hunting."* It is clear the COA is wrong in its final judgment:

> "Haeg's chasing and killing of wolves under this predator control program constituted 'hunting' under Alaska law"

In addition, using 5 AAC 92.039(h) to prove the WCP was *not* hunting, the SOA has successfully defended lawsuits claiming since the WCP was "hunting" it violated the Federal Airborne Hunting Act. The COA ruling, if it stands, opens the door for a successful suit and means WCP participants are violating federal law.

Haeg is being denied equal protection of the law.

QUESTION (14): It's unconstitutional for Haeg's appeal not to have been stayed pending PCR and/or for Haeg not to be allowed PCR in Kenai, Alaska. Haeg filed many motions to stay appeal pending PCR – citing his inability to conduct both at the same time and authority, including COA, a stay was justified. Apx.II. Beginning on November 16, 2006 the COA, without justification, has simply refused:

> "Haeg also asks this court to stay his appeal until his post-conviction relief application is decided. But the law allows Haeg to pursue an appeal and a petition for post-conviction relief at the same time. We therefore deny Haeg's request to stay his appeal." Apx.J.

The COA steadfastly refused to reconsider or provide justification.

> State v. Jones 759 P.2d 558 (Alaska App. 1988): "Jones also filed a direct appeal challenging his conviction and sentence and unrelated grounds. *The appeal was stayed pending resolution of the post-conviction procedure*"
>
> American Bar Association Standard 22-2.2: *When an application for postconviction relief is filed while an appeal from the judgment of conviction and sentence is pending, the appellate court should have the power to suspend the appeal until the conclusion of the postconviction proceeding or to transfer the postconviction proceeding to the appellate court immediately. The trial court or appellate court should exercise these powers to enable simultaneous consideration of the appeal, if taken, from the judgment of conviction and sentence and an appeal, if taken, from the judgment in the postconviction proceeding, where joinder of appeals would contribute to orderly administration of criminal justice.*

Three years of appeal without PCR claiming IAOC have already passed – and the COA final judgment was there wasn't enough record to prove IAOC – when Haeg has tapes proving this. With no justifiable reason the COA kept Haeg on a treadmill to nowhere for years for when even their own prior decisions held they shouldn't have. It may now take Haeg additional years in PCR. Almost no family can accomplish this – let alone wasting precious

judicial resources for two proceedings that should have been combined. More importantly, PCR would likely have settled Haeg's case without the current appeal.

> Adickes v. S.H. Kress and Co. 398 U.S. 144 (1970): "[T]he chief complaint isn't that the laws of the State are unequal, but that, *even where the laws are just and equal on their face, yet, by a systematic maladministration of them, or a neglect or refusal to enforce their provisions, a portion of the people are denied equal protection under them."*
>
> Monroe v. Pape, 365 U.S. 167 (1961): *"[I]f the statutes show no discrimination, yet, in its judicial tribunals, one class is unable to secure that enforcement of their rights and punishment for their infraction which is accorded to another... the State has not afforded to all its citizens the equal protection of the laws."*

Nearly all witnesses required for PCR reside in the 3rd District near Kenai. Haeg can no longer afford to fly or keep witness housed in McGrath (4th District), which is $800 rt and $200 per night from Kenai. Yet the COA refuses to order PCR in Kenai.

> American Bar Association Standard 22-1.4. [P]*rovision should be made for transfer of a case to another court if that is appropriate for the convenience of the parties* or to guard against undue prejudice in the proceeding. (c) Neither a general rule favoring nor one disfavoring submission of a postconviction

application to the same trial judge who originally presided is clearly preferable.

Haeg is being denied equal protection of the law.

Question (15): The record proves IAOC. It proves.

1. All affidavits seizing evidence and property contained devastating false statements and Haeg's attorneys never protested, asked for property back, or motioned to suppress evidence when almost all evidence could have been suppressed.

2. Haeg never received a prompt postseizure hearing, notice of a hearing, or prompt opportunity to bond – even after Haeg asked to get his property back and Haeg's attorneys didn't protest when *Waiste v. State* proves constitutional violation.

3. The SOA, without justification or explanation, increased severity of already filed charges and Haeg's attorneys never protested.

4. The SOA violated Haeg's PA after great detrimental reliance and Haeg's attorneys never protested. The SOA used Haeg's PA statement against Haeg at trial and sentencing and Haeg's attorneys didn't stop this.

5. The SOA knowingly committed material trial perjury and Haeg's attorneys didn't do anything.

6. Haeg gave up a year of guiding and statement for a PA never received and Haeg's attorney's never required any benefit to Haeg.

7. Haeg subpoenaed Cole to testify, Cole never showed up, and Robinson never protested.

8. Haeg's attorneys never protested the judge's specific use of admitted perjury as justification for Haeg's sentence.

9. Haeg's attorneys never protested the illegal revocation of Haeg's license.

10. Haeg's attorneys never filed a sentence appeal.

11. Proves with all the above constitutional violations Haeg's attorneys' points of appeal were the court didn't have subject-matter jurisdiction. Apx.KK. Alaska law proves the court had subject-matter jurisdiction:

> AS 22.15.060. Criminal Jurisdiction. (a) The district court has jurisdiction (1) of the following crimes: (A) a misdemeanor

Haeg was charged with misdemeanors in district court, irrefutably providing subject-matter jurisdiction.

12. Proves Osterman committed perjury; lied to Haeg to deprive Haeg of rights; defrauded Haeg of at least $24,000.00; wouldn't represent Haeg's interests because this would "affect the lives" of Haeg's first 2 attorneys; and was representing Haeg's first attorneys instead of Haeg. Apx.FF.

The performance of Haeg's attorneys was unreasonable and this performance gave rise to an absolute certainty that, had they performed adequately, the result of Haeg's case would have been different.

> Strickland v. Washington, 466 U.S. 668 (1984): [IAOC]... requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. [T]he proper standard requires the defendant to show that there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different.

Cuyler v. Sullivan, 446 U.S. 335 (1980): [D]efense counsel ... *failed to resist the presentation of arguably inadmissible evidence.* Indeed, the evidence of counsel's *"struggle to serve two masters [couldn't] seriously be doubted."* Thus, *a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief.*

Holloway v. Arkansas, 435 U.S. 475 (1978): "[I]n a case of joint representation of conflicting interests, the evil -- it bears repeating -- is in what the advocate finds himself compelled to *refrain* from doing, *not only at trial but also as to possible pretrial plea negotiations and in the sentencing process.* It may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but, even with a record of the sentencing hearing available, it would be difficult to judge intelligently the impact of a conflict on the attorney's representation of a client. *And to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible.*"

Smith v. State, 717 P.2d 402 (Alaska 1986) Court of Appeals: "*The fact that Smith*

was legally entitled to persist in his plea of innocence is, in our view, determinative of his claim of ineffective assistance of counsel. We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions.

We are particularly troubled by the apparent failure of both Smith's counsel and counsel for the state to disclose the substance of the negotiated plea agreement to the trial court.... Similarly disturbing is the failure of Smith's counsel to disclose to the court the fact that Smith had expressed qualms about following through with this agreement."

If the on-record evidence doesn't prove IAOC, why isn't Haeg allowed to stay his appeal to prove off-record evidence that is far more compelling?

Question (16): It's unconstitutional for the courts to delay providing Haeg a property hearing until he risked his life for it; for Magistrate Woodmancy not to be recused; and/or for Haeg not to be provided with an opportunity to cross-examine adverse witnesses, to present evidence or witness testimony, and/or to argue orally during property hearing. On July 7, 2006, in both the DC and COA and over many months, Haeg filed 16 motions for return of

property. Apx.II. Both courts denied hearing. The DC justification was the COA had jurisdiction and the COA justification the DC had jurisdiction. Haeg included these contradictory justifications to each, proving the contradiction. Chief Deputy Clerk Lori Wade confirmed COA receipt of DC denials. On November 6, 2006 frustrated Haeg finally filed an emergency motion stating since he was unjustly being denied hearing he would physically take his property back from the Troopers – in essence having to risk his life to get a hearing. Apx.II. The COA February 5, 2007 order (7 months after Haeg's first request) resulted:

> "[J]urisdiction in this case is remanded to the District Court for the limited purpose of allowing Haeg to file a motion for the return of his property which the State seized in connection with his case...conduct any proceedings necessary to decide this motion."

When Magistrate Woodmancy was assigned to his case, Haeg filed affidavits on June 26 and June 30, 2006 to recuse Woodmancy, citing bias Woodmancy displayed as clerk during Haeg's trial. Apx.EE. Alaska law required recusal yet Woodmancy remained. *See* AS 22.20.022.

On March 13, 2007 Woodmancy verbally ruled, over objection,

> "There will be no evidentiary hearing - no cross-examination of adverse witnesses, no presenting evidence or witness testimony, and no oral argument, just a couple lines why you think you should get your property back." Apx.L.

Haeg asked for reconsideration and was refused.

Goldberg v. Kelly, 397 U.S. 254 (1970): "The fundamental requisite of due process of law is the opportunity to be heard." In the present context these principles *require...an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally.*

In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.

[W]here governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots."

Because Haeg presented material issues of fact *Alaska Rule of Criminal Procedure 42(e)* required an evidentiary hearing. Material issues of fact presented:

1. The property seized was Haeg's primary means to provide a livelihood.

2. The property was irreplaceable.

3. He and his wife had no other livelihood and their short season started the day of the seizure.

4. The seizure affidavits contained devastating false statements.

5. No prompt postseizure hearing was held/offered.

6. Haeg asked when he could get his airplane back because he had clients coming the next day and the SOA said "never" – leading non-lawyer Haeg to believe there was no opportunity to protest being put out of business.

7. When Haeg hired an attorney weeks later the attorney said there was no opportunity to protest.

On March 16, 2007 Haeg appealed Woodmancy's denial of effective hearing to COA. Denied April 12, 2007. Apx.M. Haeg filed ASC Petition for Hearing of Woodmancy's denial. Denied May 27, 2007. Apx.N.

Haeg has been denied due process and the equal protection of the laws.

QUESTION (17): It was unconstitutional for Haeg not to be allowed to supplement his appeal record. Starting on August 31, 2006, Haeg motioned numerous times to supplement his appeal record with official record developed during ABA proceedings against Cole, Leaders, and Fitzgerald and with official record developed during the Alaska Commission on Judicial Conduct investigation of Judge Murphy and Gibbens. Apx.II. Haeg claimed the evidence was vital to justice in his appeal. The COA denied all motions. Apx.J. Combined with the inability to stay appeal so the record could be supplemented through PCR, the injustice is very great.

Cole's ABA record:

"Did we discuss a motion to suppress? No I don't think we did because I didn't think it was a good idea; there is no right to a prompt postseizure hearing because Alaska law doesn't allow return of property; I didn't have to show up [in response to the subpoena to Haeg's sentencing] because I didn't think I would be a good witness; his [Haeg's] statement wasn't used against him; the Governor would've placed enormous pressure on his prosecutor and judge to make an example of him; the tape recordings [made during Cole's representation] sound correct."

ABA record, recordings made when Cole represented Haeg:

"BOG members encouraging you to go outside the WCP area isn't a legal defense; you gave up a year of guiding, flew in witnesses, and gave a statement for the PA; the PA only required a one year license suspension; the SOA broke the PA at the last minute by changing already filed PA charges to charges that were more severe not agreed to; the SOA used your statement to file charges violating the PA; the only thing that can be done to enforce the PA is call Leaders boss; I left a message and she hasn't got back to me; your statement can be used against you; it is legal and ethical for the SOA to break the PA after all you did for it; I can't do anything to anger them [SOA] because I have to be able to make deals with them [SOA] in the future."

Fitzgerald's ABA testimony:

> *Haeg:* "Would you have had Tony Zellers give a statement to prosecution ... if Brent Cole had not have me first give a statement implicating Tony?"
>
> *Fitzgerald*: "[C]ertainly the fact that you had already gone to the State was a factor in the decision made with regard to whether Mr. Zeller's was goanna follow suit."
>
> *Fitzgerald*: "The last thing an attorney should do is make an enemy of a prosecutor... advocating for a client or trying to enforce a PA would make an enemy of a prosecutor. The SOA didn't use either Haeg's or Zeller's statements."

Fitzgerald's on record statement at Zellers January 13, 2005 sentencing:

> "[H]ad it not been for the cooperation, frankly of both Mr. Zellers and Mr. Haeg, there would have been additional holes in the case and my understanding is that their cooperation provided information to the State concerning at least 5 of the 9 wolves at issue. [T]he government was free to do whatever it was goanna do with that information and as is demonstrated they used it to charge additional charges against both Mr. Zellers and Mr. Haeg..."

Commission on Judicial Conduct record:

Judge Murphy and Gibbens testified to the Commission Gibbens never chauffeured Murphy during

Haeg's case. Yet Murphy flew to McGrath [pop. 400] to conduct Haeg's case, Gibbens lives in McGrath, there are no car rentals in McGrath (and no roads to anywhere else), and Gibbens was Murphy's sole transportation every morning, noon, and night – *proved by the official taped record of Judge Murphy in Haeg's case*:

> "I have to get to the store because I need to get some diet coke and I'm going to commandeer Trooper Gibbens and his vehicle to take me because I don't have any transportation."

QUESTION (18): It's unconstitutional for the SOA to be given 12 months to file their appellee brief; for correction of Haeg's illegal sentence to be delayed until it harmed Haeg; and/or not staying license suspension/revocation pending appeal. Haeg filed appellant brief on January 22, 2007 and was ordered to correct it by February 20, 2007 – which he did.

Through motions, granted by COA, the SOA didn't submit their appellee brief until February 8, 2008 – *12 months* after Haeg filed his brief. According to *Alaska Rules of Appellate Procedure Rule 217* the SOA was to file their brief *within 20 days* of Haeg's. The SOA even motioned for more then 12 months and it was only Haeg's January 8, 2008 opposition, documenting the incredible breakdown in justice, which prevented this. Apx.LL.

On November 6, 2006 Haeg motioned the COA to fix the 5-year revocation of his guide license to a 5-year suspension. *AS 08.54.720(a)(15)* states licenses can be suspended for a number of years *or revoked for life*. Federal landowners required Haeg to promptly remove or destroy $100,000 in hunting camps if his license were revoked

instead of suspended. The rational was camp permits required Haeg be licensed, and a revoked license meant Haeg had no license. A suspended license meant Haeg still had the required license. The SOA didn't oppose, stating the error was because the prepared judgment form stated "revocation" instead of "suspension" next to the box Judge Murphy checked. Apx.H.

> November 16, 2006 COA ruling:
>
> "Haeg also asks this Court to modify the portion of his sentence that calls for revocation of his guide license. *We have the power to grant this kind of relief* only if the trial court had no legal authority to revoke Haeg's license, or if the trial court was clearly mistaken in deciding to impose a license revocation as opposed to a suspension. *In either event, we wouldn't grant such relief until we decided Haeg's appeal.*" Apx.J.

On November 27, 2006 Haeg filed Motion for Reconsideration, stating under oath that if his sentence were not promptly corrected he would lose the camps. Apx.II. The COA never ruled. On January 6, 2007 Haeg filed Motion of Ruling, again stating under oath he would be forced to burn down $100,000 in camps if the COA failed to promptly correct his sentence. Apx.II. The COA never ruled. On July 16, 2007, 9 months after first asking and long after the camps were gone, Haeg indicated he would seek restitution from the COA for their failure. Apx.II. Although Haeg never asked for it in his appeal brief (because the camps were already gone), the COA September 10, 2008 judgment corrected Haeg's sentence (nearly 2 years after Haeg asked) - *stating they had told Haeg that if he needed immediate relief he could've asked*

the DC – when their own order irrefutably proves this false, stating they had the power but would not exercise it. Apx.A.

On November 6, 2006 Haeg motioned to stay his license suspension/revocation, citing the DC had been asked and had refused; the SOA false affidavits and false testimony at trial; the DC specific use of the SOA false testimony as justification for Haeg's sentence without stay; the year of guiding Haeg never received credit for - given for a PA the SOA broke after the year was gone; and citing the SOA falsely claimed at sentencing they didn't know why Haeg had quit guiding for a year. Apx.II.

On November 16, 2006 the COA ruled Haeg must first ask the DC for a stay and, if they had, Haeg could "renew" his motion. Apx.J.

On November 27, 2006 Haeg again asked for a stay, again telling the COA he already asked the DC to stay his license suspension/revocation, it refused, and justification was the falsehood Haeg, "killed most, if not all, the wolves in 19C...where he hunts." Apx.H.

The COA's never ruled on Haeg's "renewed" motion.

On June 18, 2007 Haeg filed Motion for Ruling; on July 3, 2007 the COA's claimed it had already ruled on Haeg's prior motions Apx.O.; on July 16, 2007 Haeg showed no ruling was ever made on his many motions to stay his license suspension/revocation - with no response. On August 23, 2007 Haeg filed another Motion for Ruling. Apx.II. October 23, 2007 COA ruling:

"We again decline to stay the revocation/suspension of his [Haeg's] guiding license."

There was no prior ruling, no justification, and this was 11 months after Haeg first asked.

The above delays are unconstitutional. See *Adickes v. S. H. Kress and Co.* and *Monroe v. Pape* supra.

QUESTION (19): It's unconstitutional for the COA to fail to apply *Waiste v. State* 10 P.3d 1141 (Ak 2000) and/or to falsely claim Haeg relied principally on cases other then Waiste.

To deny property return the COA September 10, 2008 judgment claimed Haeg relied "primarily on the decisions in *F/V American Eagle v. State* and *State v. F/V Baranof*." The COA never mentioned Waiste. Yet in Haeg's February 20, 2007 opening brief, March 17, 2008 reply brief, August 18, 2007 Petition for Review, June 2, 2007 Motion for Return of Property, July 2007 Opposition, October 29, 2007 motion for Ruling (all used by the COA as briefing in deciding A-10015/A-9455) Haeg relied primarily upon Waiste v. State, citing it first, most often, and with nearly twice the direct quotes of other cases. Haeg very specifically pointed out the COA failure to apply Waiste in his September 19, 2008 Petition for Rehearing Apx.MM., which the COA then denied. Apx.C.

Waiste is the seminal case determining due process required when seized property is someone's primary means to provide a livelihood during a short season. Waiste holds *federal* and Alaska *due process requires a prompt postseizure hearing* and that the property *must be allowed out on bond*. Haeg didn't receive a hearing (not even notice of a hearing) and wasn't allowed to bond his property out. By not applying Waiste the COA denied Haeg the equal protection of the law and by falsely claiming Haeg relied principally upon other cases they deprived Haeg of due process.

QUESTION (20): It's unconstitutional for Haeg's attorneys to have intentionally deprived Haeg of constitutional rights. Haeg's attorneys told him:

1. Nothing could be done about the SOA's falsification of material evidence locations on all seizure affidavits.
2. Haeg had no right to a prompt postseizure hearing and no right to bond his property out because "Alaska law" didn't permit this.
3. Haeg couldn't tell anyone the BOG told Haeg more wolves had to be killed or the WCP would be shut down and that if Haeg took wolves outside the WCP area to just claim they were taken inside the WCP area.
4. WCP law didn't protect Haeg from hunting/guiding violations.
5. There was no way to enforce his PA except to call Leaders boss; I can't piss Leaders off because I have be able to make deals with him in the future; it is legal and ethical for the SOA to break Haeg's PA after Haeg had given a years guiding, had flown in witnesses, and had given a statement for it.
6. The SOA could use Haeg's PA statement against Haeg after PA failure.
7. The court didn't have subject-matter jurisdiction because the information wasn't supported by affidavit.
8. For the subject-matter jurisdiction tactic to work Haeg must never tell the court there was a PA or all Haeg had done for it – because this would "admit" jurisdiction.
9. The jurisdiction tactic was so good Haeg shouldn't put on evidence at trial.

10. Nothing could be done to enforce a subpoena.

11. Haeg couldn't appeal his sentence.

12. Haeg being sentenced at 2 AM, after everyone had been up since 4 AM and said they weren't functioning, "didn't matter".

13. Nothing could be done about Gibbens perjury because "the good old boys network of Troopers, prosecutors, and judges will protect their own."

14. *Shaw v. Dept. of Administration, Public Defender Agency, 816 P 2d 1358 (AK 1991)* prevented Haeg from suing anyone.

15. The COA would "throw out" Haeg's appeal if he presented evidence his own attorneys sold him out.

16. A judge wouldn't care about the SOA's known perjury to convict/sentence Haeg for hunting/guiding violations.

17. Proving his attorneys conspired to deprive Haeg of a fair trial "isn't goanna help you."

18. It was time Haeg "realized this might be a life-changing event and to try to fix the errors and not have it change life was very dangerous."

Rights Haeg was deprived of by his attorneys:

1. The right against unreasonable searches and seizures.
2. The right against double jeopardy.
3. The right against self-incrimination.
4. The right to due process
5. The right to confront witnesses against him.
6. The right to compel witnesses.
7. The right to assistance of counsel.

8. The right to the equal protection of the laws.

Tape recordings prove it was *because* Haeg hired attorneys that he was deprived of these rights.

> Powell v. State of Alabama, 287 U.S. 45 (1932): "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. *He is unfamiliar with the rules of evidence.* Left without the aid of counsel *he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible.* He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one."
>
> *State v. Sexton*, 709 A.2d 288 (N.J. Super. CT. App. Div. 1998): "Court found both prosecutorial misconduct and ineffective assistance *which created the 'real potential for an unjust result'.*"
>
> See also Strickland v. Washington, Cuyler v. Sullivan, Holloway v. Arkansas, and Smith v. State.

QUESTION (21): It's unconstitutional for Haeg's prosecution, conviction, and sentence to be tainted by systemic corruption within Alaska's judicial system. Possible motivation for this:

> Alaska Department of Fish and Game trial testimony, "There was a tremendous amount of controversy surrounding it, and we wanted to do this in several other areas. And this was the one everybody was kind of watching. They only issued three permits. I mean it was very controlled. The program was not being as effective as hoped...very few wolves taken [before Haeg's participation]. [W]e don't know to the extent [Haeg's] conduct has jeopardized the program at this point. Anything has the potential to jeopardize predator management in our state. I mean there's a huge faction of people that send me hate mail, death threats. It doesn't end there. I mean people are very opposed to the taking of wolves...There's a lot of people watching this decision. We all are."
>
> Judge Murphy, "[T]hings you [Haeg] might not think of, *such as the politics involved. Such as the affects to the wolf kill program.*"

Haeg, realizing he may be made an example of, possibly affecting his entire life, and because of his then total ignorance of the law, hired Alaska's very best attorneys. Cole was #1 wildlife/guide attorney, with Fitzgerald #2. Both testified to this expertise. Robinson was #2 criminal attorney in Alaska (#1 was unavailable and Fitzgerald represented Zellers). After Robinson every criminal attorney in Alaska, until Osterman, refused to represent Haeg. The common concern, "big state, small attorney pool." What are the ramifications if attorneys like these are shown to have "sold out" their own clients?

Haeg's additional attempts to secure justice – all without result:

1. Filed complaint of Gibbens perjury at trial. Given to Roger Rom, the same attorney defending the SOA's conviction of Haeg during appeal. Decision was proving Gibbens perjury would require a jury to believe Haeg told the truth during his PA statement when he told Gibbens the evidence locations were in 19D and not 19C, - and since Haeg was now a convicted criminal no jury would believe him. Yet Gibbens own GPS coordinates proved the evidence was found in 19D and Gibbens, after immediate cross-examination, admitted his testimony the evidence was in 19C was false - and that the evidence had really found in 19D (as Haeg claimed during his PA statement). This is by definition perjury– even without Haeg's testimony.

2. Keith Mallard, head of Trooper Internal Affairs – charged with investigating Trooper corruption, refused to provide an address to which Haeg could send a complaint and evidence – even when Haeg directly asked.

3. After a complaint of Gibbens perjury, State Ethics Board attorney David Jones ruled perjury wasn't unethical.

4. When "official" record tapes came up "blank" during fee arbitration the ABA refused to reconstruct the record – even though Haeg had made tapes at the same time with two other tape recorders. The now "blank" record was made when Cole and Fitzgerald committed perjury and conspiracy, which obtained a decision in Cole's favor.

5. The ABA still refused to act on Haeg's grievance complaint against Leaders after a March 2, 2007 news article documented a situation similar to Haeg's:

> **Rogers judge chastises prosecution, investigation. *'This is not Iraq'***
>
> By PHIL HERMANEK Peninsula Clarion
>
> "The defense has a constitutional right. This is not Iraq," said retired Anchorage Superior Court Judge Larry Card, who is serving as judge pro-tem in the trial.
>
> A debate rose to a crescendo pitch as Card told assistant district attorney Scot Leaders, in the nearly 14 years Card has been a judge, he has never seen as many discovery violations in a most-serious case — murder.
>
> "I find it shocking we have these numerous violations," Card said. He then reminded Leaders of Rogers' constitutional right to a fair trial.

6. Haeg sent evidence of the above to the entire Alaska Legislature, who stated they couldn't help because it concerned the judicial branch.

7. High level State meetings have taken place concerning the corruption in Haeg's case, meetings including Governor Sarah Palin, Department of Law, and Commissioner of Public Safety – all without result.

Most Disturbing

The FBI provided the most disturbing evidence of systemic corruption within Alaska's judicial system.

A virtual blackout of communication has resulted between the witnesses in Haeg's case and the FBI after Greg Kaplan, then U.S. Representative Don Young's Deputy Director, told FBI Special Agent Colton Seale that on January 8, 2007 Haeg tape recorded a conversation in which Seale stated there had been "a number" of FBI investigations into allegations of corruption within Alaska's judicial system "nearly identical" to Haeg's and that in every case "the investigation grew rapidly and implicated more and more people until a call came from [Washington] DC to pull the plug." Seale went on to say "I wouldn't know" when asked if the call came from U.S. Representative Don Young, U.S. Senator Ted Stevens, or U.S. Senator Lisa Murkowski.

This all happened before Stevens, Young, or numerous Alaska legislators were linked to corruption.

It wasn't thought possible this level of corruption could exist, requiring diverse agencies and organizations to be involved, until these Supreme Court cases were found:

> *Monroe v. Pape*, 365 U.S. 167 (1961): "Combinations, darker than the night that hides them, conspiracies, wicked as the worst of felons could devise, have gone unwhipped of justice. Immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress ... "

Adickes v. S.H. Kress and Co. 398 U.S. 144 (1970): "The arresting power is fettered, the witnesses are silenced, the courts are impotent, the laws are annulled, the criminal goes free, the persecuted citizen looks in vain for redress."

U.S. v. Price, 383 U.S. 787 (1966): "[T]here were organizations which committed outrages... for the purposes of intimidating and coercing classes of citizens in the exercise of their rights. [T]he time will come when retaliation will be resorted to unless the Government of the United States interposes to command and to maintain the peace; when there will be retaliation and civil war; when there will be bloodshed and tumult..."

Elkins v. U.S., 364 U.S. 206 (1960) " If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means - to declare that the Government may commit crimes in order to secure the conviction of a private criminal - would bring terrible retribution."

U.S. v. Cronic, 466 U.S. 648 (1984): As Judge Wyzanski has written: *"While a criminal trial isn't a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators."*

The perjury moving evidence was a knife stab in Haeg's back; the deprivation of business property before charge, conviction, and judgment was starving Haeg before battle; the lies of Haeg's attorneys was poison in Haeg's water; and the false promise of a PA to deprive rights was promising Haeg he wouldn't have to enter the ring to do battle if he would give up all his arms and armor - and afterward throwing him in naked to do battle with the gladiators.

How many others has this happened to? How many will it happen to if nothing is done?

Haeg and a growing number of others are beyond anger at the death of the United States Constitution by the very people charged and trusted to uphold it – using their fiduciary position, governmental authority, and ability to suppress appeals against the people who, ignorant of the law, the Constitution was supposed to protect from the government. We will not be held hostage within our own State so we may be stripped bare.

5. Haeg asks this court again consider the "missing" November 8, 2004 letter Apx.W., the entire transcript of Haeg's representation hearing Apx.FF., the May 18, 2008 Anchorage Daily News article Apx.NN., the letters/affidavits from concerned people Apx.OO., the brochure documenting a wonderful life destroyed Apx.PP., and then give careful thought that it is now years and a mountain of injustices later. Appeals are nearly exhausted yet the fire burning brighter and brighter within Haeg and others to breath life into the Constitution is the same fire that created it.

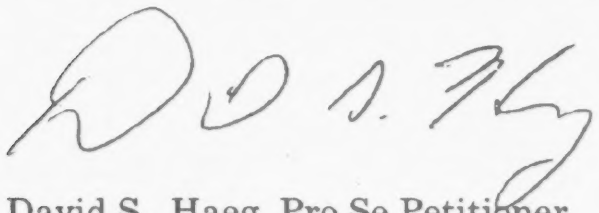
Conclusion

It has taken superhuman effort and sacrifice for Haeg and his family to make it through Alaska's judicial system to reach this United States Supreme Court. If this Court does not promptly lend its strength, authority, and wisdom to guide all of us we fear this breach in justice will rapidly widen until it consumes this great State. For those of us who have sworn an oath to protect the United States Constitution, and have the ability, must do so no matter how alone we are, no matter how sophisticated or great the attack is, and no matter what means we must use. We must not fail in bringing down the strongest and most terrifying of nightmares, like the one now before you, because if we can't what will happen to the less able that stand behind us?

Relief Requested

On bended knee, bowed head, penniless, and after five years of terrible storms with wife and daughters in tow, Haeg humbly begs this United States Supreme Court promptly accept this petition.

I declare under penalty of perjury the forgoing is true and correct. Executed on February 23, 2009.



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Supreme Court, U.S.
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NO. D

IN THE SUPREME COURT OF THE UNITED STATES

DAVID S. HAEG, Petitioner

V.

STATE OF ALASKA, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE ALASKA COURT OF APPEALS

PETITIONER'S APPENDIX
VOLUME 1 OF 2 - (APPENDIXES A-FF)

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APPENDIX A

September 10, 2008: In the Court of Appeals of the State of Alaska, Haeg v. State, Court of Appeals No. A-9455-10015, Trial Court No. 4MC-04-24CR, Memorandum Opinion & Judgment No. 5386, dated 9/10/08:

Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges. COATS, Chief Judge.

"David S. Haeg was convicted of five counts of unlawful acts by a guide: hunting wolves same day airborne;[1] two counts of unlawful possession of game;[2] one count of unsworn falsification;[3] and one count of trapping wolverine in a closed season.[4] Haeg appeals these convictions in Case No. A-9455. While this appeal was pending, Haeg asked the district court to suppress the evidence used during his trial that the State had seized from him during its criminal investigation and to have the property returned to him. The district court denied the motion, and Haeg appeals this decision in Case No. A-10015.

In Case No. A-9455, Haeg primarily argues that the State used perjured testimony to obtain search warrants and that he should not have been charged as a guide for hunting wolves same day airborne — first, because he was not guiding at the time, and second, because he was not hunting at the time. He also argues that the prosecutor violated Alaska Evidence Rule 410 by using statements that Haeg made during the parties' failed plea negotiations.

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[1] AS 8.54.720(a)(15) & 5 AAC 92.085 (8).
[2] 25 AAC 92.140(a).
[3] AS 11.56.210(3 (a)(2).
[4] 5 AAC 84.270(14).

And he asserts that his attorneys provided ineffective assistance of counsel.

In addition, Haeg claims that the district court committed various errors during the course of the proceedings. In particular, he contends that the district court (1) failed to inquire into the failed plea negotiations, (2) failed to rule on a motion protesting the State's use of Haeg's statement made during plea negotiations as the basis for the charges, (3) made prejudicial rulings concerning Haeg's defense that he was not "hunting," (4) failed to instruct the jury that Haeg's co-defendant, Tony Zellers, was required by his plea agreement to testify against Haeg, (5) unfairly required Haeg to abide by a term of the failed plea agreement, (6) failed to force his first attorney to appear at Haeg's sentencing proceeding, and (7) when imposing sentence, erroneously identified the location where the majority of the wolves were taken. In a separate claim, he contends that the district court erred by revoking his guide license instead of suspending it.

In Case No. A-10015, Haeg asserts that the district court erred when it denied his post-conviction motion to suppress the evidence that the State had seized from him during its criminal investigation and to return the property to him. He also contends that AS 12.35.020, AS 12.35.025, AS 16.05.190, and AS 16.05.195 (criminal seizure and forfeiture statutes) are unconstitutional because these statutes do not require the government to inform defendants in a criminal case that they have the right to contest the seizure of their property.

For the reasons explained here, we affirm Haeg's convictions. But we conclude that the district court meant to suspend rather than to revoke his guide license.

Therefore we direct the district court to modify Haeg's judgment to reflect that Haeg's guide license was suspended for five years.

Facts and proceedings

*H*aeg was a licensed master big game guide operating in game management unit 19. In early March 2004, he and Zellers received permits allowing them to participate in a predator control program near McGrath.

The predator control program applied to wolves in game management unit 19D-East, which was located inside unit 19D. Within unit 19D-East, participants in the program were allowed to kill wolves by shooting them from an airborne aircraft or by landing the aircraft, exiting it, and immediately shooting them.[5] The purpose of the program was to increase the numbers of moose in unit 19D-East by decreasing the number of wolves preying on them. In March 2004, unit 19D-East was the only unit where this type of predator control was permitted.

To help the Department of Fish and Game monitor the progress of the predator control program, the participants were required to separately identify and seal the hides of all wolves taken under the program and to report the locations where the wolves were killed. Alaska State Trooper Brett Gibbens, among others, was notified whenever wolves were taken under the program. One of his duties was to verify the locations where the wolves were reportedly killed.

Soon after Haeg and Zellers received their permit, they reported that on March 6, 2004, they had taken three gray wolves in the area of Lone Mountain near the Big

[5] See 5 AAC 92.039(5 (h)(1), (3).

River. When Gibbens was notified of this report, he suspected that the information was inaccurate. The coordinates that Haeg and Zellers gave placed the kill site just within unit 19D-East. But Gibbens knew that the wolves in the pack then frequenting that area were predominately black, with only two that might be considered gray.

On March 11, 2004, Gibbens inspected the reported kill site. He found wolf tracks but no kill site near the reported location. In addition to this discrepancy, Gibbens recalled that on the day of the reported kills, when he was off-duty, he had seen Haeg's distinctive airplane. The airplane was a mile or two outside of unit 19D-East and was flying away from that unit. To Gibbens, it appeared that the pilot was following a fresh wolf track.

On March 21, Gibbens met and spoke to Haeg and Zellers when they returned to McGrath to seal the three wolf hides. While Haeg refueled his airplane, Gibbens and Haeg talked about the airplane's skis and its oversized tail wheel. Gibbens noticed that the airplane's skis and its oversized tail wheel would leave a distinctive track when it landed in snow. Gibbens and Zellers discussed the weapons and the shotgun ammunition that Zellers was using to shoot the wolves. This ammunition was a relatively this meeting, Haeg said that he knew the boundaries of the area where he was allowed to take wolves under the predator control program.

On March 26, while flying his airplane, Gibbens spotted wolf tracks from a large pack of wolves on the Swift River. He also saw where another airplane had landed to examine the track and determine the wolves' direction of travel. Because his airplane was low on fuel, Gibbens continued home. The next day, he returned to investigate. From the air, he confirmed that the area was not a trap site

or kill site. He then followed the wolf tracks up the Swift River and found where wolves had killed a moose on an island in the river. The island was covered with heavy brush and had numerous wolf trails. Gibbens saw that someone had set snares and leg traps on the island.

Gibbens followed the wolf tracks further upriver. About a half mile away from the moose kill, he saw where a wolf had been killed. It looked like the wolf had been shot from the air, and there was a set of airplane tracks that had taxied over the wolf kill site. He continued to follow the wolf tracks up the Swift River and found three more places where wolves had been shot from the air. He saw evidence that the wolf carcasses had been picked up and placed in an airplane, and he saw a staging area nearby where the airplane had landed several times.

These kill sites were all about forty to fifty-five miles from the nearest boundary of unit 19D-East. There was no evidence near these sites of snaring or trapping, nor of any ground transportation like a snow machine. Rather, the evidence indicated that an airplane had landed near the kill sites and that someone had gotten out of the airplane, approached the wolf carcasses, and hauled them back to the airplane. The airplane tracks at the kill sites and at the staging area appeared to be the same. Gibbens recognized that they were similar to Haeg's airplane's distinctive ski and tail wheel arrangement.

With the help of other troopers, Gibbens more thoroughly investigated the kill sites. The troopers found shotgun pellets that were consistent with the type of buckshot Haeg and Zellers were using. They also found a spent .223 cartridge stamped with ".223 Rem-Wolf." At the staging area, they found where a carcass had been placed in the snow.

After finding this evidence, Gibbens applied for and obtained a search warrant for Haeg's airplane and for his lodge at Trophy Lake. The lodge was listed as Haeg's base of operations for the predator control program and was not far away. The lodge was located in unit 19C.

At the lodge, the troopers found wolf carcasses, evidence that the wolves had been recently skinned, and rifle magazines loaded with ammunition stamped with ".223 Rem-Wolf." Gibbens also saw airplane ski tracks leading up to the front of the lodge that matched the tracks from the kill sites and the staging area. Troopers seized six carcasses from the lodge. Gibbens later performed a necropsy on each carcass. The necropsies indicated that all six wolves had been shot from the air with a shotgun.

Other evidence found during the search indicated that the leg traps set around the moose kill on the Swift River island belonged to Haeg. On April 2, Gibbens found that six of those leg traps were still set and catching game even though leg trap season for wolves and wolverines had ended. He also saw that two wolverines were caught in nearby snares. The season for taking wolverines with traps or snares had ended March 31.

Based on the evidence found during the search of the lodge, additional search warrants were issued, including one for Haeg's residence in Soldotna. While searching Haeg's residence, troopers seized a 12 gauge shotgun and a .223 caliber rifle along with magazines, spent casings, and ammunition. The .223 ammunition seized was stamped with ".223 Rem-Wolf." The troopers also seized Haeg's airplane.

Evidence seized at the residence indicated that the snares set around the moose kill on the Swift River belonged to Haeg. Gibbens later went back to the Swift

River moose kill site after the snare season for wolf ended and found that the snares were still active and catching game. The remains of two wolves were in these snares.

Later, executing one of the search warrants obtained after searching Haeg's residence, troopers seized nine wolf hides from a business in Anchorage. These hides had been dropped off by Zellers. Eight of the nine hides clearly showed that the wolves had been shot with a shotgun. Of these eight hides, many had damage indicating that the wolves had been shot from the air. But despite this evidence, only three of the hides had been sealed under the predator control program. According to the sealing certificates — and despite evidence to the contrary — Haeg and Zellers claimed that the remaining six hides had not been shot from an airplane. Rather, when sealing these six hides, Haeg and Zellers reported that they had killed the wolves in unit 16B by shooting them from the ground and transporting them with snowmobiles.

After completing this investigation, Gibbens concluded that the nine wolves had been shot from an airplane, that none had been taken in unit 19D-East, that the sealing certificates had been falsified, and that Haeg and Zellers had unlawfully possessed the hides. He also concluded that the relevant leg traps and the snares belonged to Haeg and that they were still actively catching game after the relevant leg trap and the snare seasons had closed.

Sometime after Gibbens completed his investigation, the State entered separate plea negotiations with Haeg and Zellers. The negotiations with Haeg broke down, but the State reached a plea agreement with Zellers. Among other things, Zellers was required to enter a plea for two consolidated counts of violating AS 8.54.720(a)(8)(A),

unlawful acts by a guide. He was also required to testify against Haeg.

In April 2005, Haeg moved to dismiss the information. Among other things, he argued that the State could not charge him for hunting wolves same day airborne because his predator control permit allowed him to do so, even if only in unit 19D-East.

In a written decision, District Court Judge Margaret L. Murphy rejected Haeg's arguments and denied the motion.

A jury trial began July 26, 2005, with Judge Murphy presiding. Among others, Gibbens, Zellers, and Haeg testified. The gist of Gibbens's testimony is set out in the preceding paragraphs. This testimony was corroborated not only by Zellers, but by Haeg himself.

Haeg testified that he was a licensed guide. He conceded that he and Zellers knew (or, in one instance, should have known) that they were taking the wolves outside of unit 19D-East, that they had intentionally falsified the sealing certificates for all nine wolves, and that they had possessed the wolves and hides illegally. He also admitted that he was responsible for the leg traps that were still catching game after the leg trap season had closed.

But in his defense against the hunting charges, Haeg testified that he was not unlawfully "hunting" the wolves, but was only violating his predator control permit.

Haeg denied responsibility for snaring wolves out of season and explained that the snares had been turned over to another trapper who was supposed to close them out when the season ended.

The jury found Haeg guilty of all five counts of unlawful acts by a guide: hunting wolves same day airborne; two counts of unlawful possession of game; one count of unsworn falsification; and of one count of trapping wolverines in a closed season. The jury found Haeg not guilty of one count of snaring wolves in a closed season[6] and of failure to salvage game.[7]

At sentencing, Judge Murphy ordered Haeg to forfeit the nine wolf hides, a wolverine hide, the airplane, and the guns and ammunition used to take the wolves.

She also revoked Haeg's guiding license for five years. This appeal followed.

While this appeal was pending, Haeg filed a motion requesting this court to order the State to return to him the property that had been seized during the criminal investigation. We remanded the case for the limited purpose of allowing the district court to resolve Haeg's motion. Relying on Criminal Rule 37, Haeg asked the district court to suppress the evidence seized during the investigation and to return the property to him. Magistrate David Woodmancy denied Haeg's motion. Haeg appeals this decision.

Another of Haeg's motions asks this court to modify part of his sentence. Haeg asserts that Judge Murphy erred when she revoked his guide license instead of suspending it.

Discussion

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[6] 5 AAC 84.270 (13).
[7] 5 AAC 92.220(a)(1).

Haeg's appeal in No. A-9455

Haeg's claim that the State used perjured testimony

Haeg contends that Trooper Gibbens intentionally made false statements in his search warrant affidavit. In particular, Haeg claims that Gibbens lied when he said in his affidavit that he found evidence in unit 19C that Haeg had taken wolves. But Haeg did not challenge the search warrant affidavit prior to trial. Because of this, his claim is forfeited.[8] And, under *Moreau v. State*,[9] he is barred from bringing this claim on appeal, even as a matter of plain error.[10]

In *Moreau*, the Alaska Supreme Court acknowledged that it was "clear that a false affidavit in support of a search warrant can, in appropriate circumstances, nullify the warrant."[11] But the court went on to rule that "[w]hile we do not state that search and seizure issues are incapable of plain error analysis, we believe that the exclusionary rule which requires the suppression of illegally obtained evidence is usually not appropriately raised for the first time on appeal."[12] The court explained that the exclusionary rule "is a prophylactic device to curb improper police conduct and to protect the integrity of the judicial process. Thus, justice does not generally require that it be applied on appeal where it is not urged at trial[.]"[13]In light of *Moreau*, Haeg cannot pursue this claim.

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[8] See Alaska R. Crim. P. 12(b) and 8 (e).
[9] 588 P.2d 275 (Alaska 1978).
[10] Id. at 279-80.
[11] Id. at 279.
[12] Id. at 280 (footnote omitted).
[13] Id.

Why we conclude that Haeg could be convicted of unlawful acts by a guide: hunting wolves same day airborne

In a related argument, Haeg contends that it was Gibbens's perjured affidavit that allowed the State to charge Haeg with unlawful acts as a guide. In Haeg's view, had Gibbens's affidavit stated that the wolves were killed in unit 19D, instead of unit 19C, then the State could only charge him with violating his predator control permit.

But Haeg misrepresents what his permit allowed. The record shows that Haeg was permitted to take wolves same day airborne only in unit 19D-East. He had no authority to take the wolves same day airborne in any other part of unit 19D. Gibbens's affidavit states that the four kill sites he found were well outside of unit 19D-East, the only area where Haeg and Zellers were permitted to take wolves same day airborne. In addition, Haeg acknowledged at his trial that he and Zellers killed all nine wolves outside of the permitted area. In short, the information in the affidavit did not result in Haeg being wrongly charged.

Haeg further contends that even if he did kill wolves beyond the authority granted by his predator control permit, he was not engaged in the "hunting" of wolves — and, thus, he did not violate any statute or regulation that prohibits same-day airborne hunting.

This argument is mistaken. Under the definition codified in AS 16.05.940(21), the term "hunting" is not confined to the killing of animals for food or sport. Rather, "hunting" is defined as "[any] taking of game under AS 16.05 – AS 16.40 and the regulations adopted under those chapters [of the Alaska Statutes]." The term "taking of game" includes more than simply the killing of game. As defined in AS 16.05.940(34), "take" means the "taking,

pursuing, hunting, ... disturbing, capturing, or killing [of] game," as well as any attempt to engage in these acts.

The predator control program that Haeg participated in was established under 5 AAC 92.110 – 125; these regulations were adopted by the Board of Game under Title 16, Chapter 5. Thus, Haeg's chasing and killing of wolves under this predator control program constituted "hunting" under Alaska law. And because Haeg's acts of chasing and killing wolves were not authorized under the terms of his predator control permit, these acts constituted unlawful hunting. Under Alaska law (specifically, AS 16.05.920(a)), *all* taking of game is unlawful unless it is permitted by AS 16.05 – AS 16.40, AS 41.14, or a regulation adopted under those chapters of the Alaska Statutes.[14]

For these reasons, Haeg could lawfully be convicted of violating AS 08.54.720(a)(15), the statute that makes it a crime for a licensed guide to knowingly violate a statute or regulation that prohibits same-day airborne hunting.

We understand that Haeg was not guiding when he and Zellers were taking the wolves. But this does not matter. Alaska Statute 08.54.720(a)(15) does not make it a crime to knowingly violate a statute or regulation prohibiting same day airborne *while guiding*. Rather, that statute makes it a crime for any *person licensed to guide* to knowingly violate a statute or regulation prohibiting same-day airborne hunting.

Haeg suggests that he was convicted of the hunting offenses because Gibbens lied when he testified that some wolves were killed in unit 19C. But Gibbens retracted this

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[14] See State v. Eluska, 724 P.2d 514, 515 (Alaska 1986); Jones v. State, 936 P.2d 1263, 1266 (Alaska App. 1997).

testimony during cross examination, clarifying that the wolves were killed in unit 19D but not in unit 19D-East. As already noted, Haeg admitted that none of the wolves was killed in unit 19D-East.

Haeg also asserts that Gibbens lied by testifying at sentencing that he did not know why Haeg had not guided for an entire year. Haeg argues that this alleged testimony was perjury because Gibbens — according to Haeg — was aware that part of the failed plea agreement required Haeg to give up guiding for a year. But because Haeg did not litigate the terms of the failed plea agreement in the district court, there are no factual findings supporting Haeg's claim. Furthermore, Haeg had the opportunity to refute any testimony Gibbens gave during the sentencing proceedings, and it was up to Judge Murphy to determine whether Gibbens was credible. *Haeg's claim that the prosecutor violated Evidence Rule 410* Haeg claims that the State violated Evidence Rule 410 by using a statement he made during failed plea negotiations to charge him with crimes more serious than he had initially faced. But Haeg did not litigate this issue in the district court. Because he did not preserve this claim of error below, Haeg now has to show plain error.[15] As we have explained in the past, "[o]ne of the components of plain error is proof that the asserted error manifestly prejudiced the defendant."[16]

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[15] See Wettanen v. Cowper, 749 P.2d 362, 364 (Alaska 1988) (issues and arguments not raised below are considered waived on appeal absent plain error); see also John v. State, 35 P.3d 53, 63 (Alaska App. 2001) (where record reflected no lower court ruling on appellant's Evidence Rule 410 claim, appellate court declined to address it).

[16] Baker v. State, 22 P.3d 493, 501 (Alaska App. 2001); see also Crutchfield v. State, 627 P.2d 196, 198 (Alaska 1980) ("[A]n alleged error is reviewable as plain error only if it raises a substantial and important question and is obviously prejudicial.").

In this case, the State filed an initial information and then amended it twice. Each version of the information was supported by a probable cause statement that set out Gibbens's investigation and a summation of the statements made by Haeg and Zellers. Thus, even had Haeg's statements been removed from the charging document, the remaining evidence from Gibbens and Zellers would still support the charges against Haeg.[17] And even though the State initially charged Haeg with less serious charges, the State had the discretion to file more serious charges.[18] In other words, even if the State had not used his statement's to support the information, Haeg would still have faced charges that he committed unlawful acts by a guide, hunting same day airborne. Because Haeg has not shown that the error he asserts manifestly prejudiced him, he has not shown that plain error occurred.

Haeg also suggests that the State used his interview to convict him. But Haeg did not raise this issue at trial, nor does the record support this conclusion. The record shows that the State did not offer Haeg's pre-trial statement during its case-in-chief or during its rebuttal case. In addition, Zellers testified for the State and his testimony, along with Gibbens's, was sufficient to support

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[17] Cf. State v. McDonald, 872 P.2d 627, 638 (Alaska App. 1994) (If inadmissible evidence is presented to a grand jury, "the indictment will be vitiated only 'if the remaining evidence was insufficient to support [the] indictment or the improper evidence was likely to have had an overriding influence on the grand jury's decision.'" (quoting Boggess v. State, 783 P.2d 1173, 1176 (Alaska App.1989) (alteration in McDonald)).

[18] See State v. District Court, 53 P.3d 629, 633 (Alaska App. 2002) (The State "[has] the discretion to decide whether to bring charges against a person who has broken the law and, if so, to decide what those charges will be.").

Haeg's convictions. Finally, in his own testimony, Haeg admitted that he had committed all but two of the charged offenses (and he was acquitted of those two). As we explained earlier in this decision, Haeg testified that he was a licensed guide, that he had taken the wolves same day airborne, that he knew that he was acting outside the predator control program area, that he and Zellers had falsified the sealing certificates, that they had unlawfully possessed game, and that his leg traps were still catching game after the season had closed. Haeg has not shown that plain error occurred.

Haeg's claim that his attorneys were ineffective

Haeg claims that his attorneys provided ineffective assistance of counsel. We have consistently held that we will not consider claims of ineffective assistance for the first time on appeal because, in most instances, the appellate record is inadequate to allow us to meaningfully assess the competence of the attorney's efforts.[19] Haeg's case is typical — that is, the appellate record is inadequate to allow us to meaningfully assess the competence of Haeg's attorneys' efforts. Haeg's claim of ineffective assistance must be raised in the trial court in an application for post-conviction relief under Alaska Criminal Rule 35.1.

Haeg's claim that the district court erred by failing to inquire about plea negotiations

Haeg argues that Judge Murphy should have asked the parties about the failed plea negotiations. If Haeg believed that he had an enforceable plea agreement with the State, he was entitled to ask the district court to

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[19] See Tazruk v. State, 67 P.3d 687, 688 (Alaska App. 2003); Hutchings v. State, 53 P.3d 1132, 1135 (Alaska App. 2002); Sharp v. State, 837 P.2d 718, 722 (Alaska App. 1992); Barry v. State, 675 P.2d 1292, 1295-96 (Alaska App. 1984).

enforce it.[20] But we are aware of no requirement that a trial court in a criminal case, without a motion or request from the parties, must ask why plea negotiations failed. We conclude that Haeg has not shown that any error occurred.

Haeg's claim that the district court failed to rule on an outstanding motion

Haeg claims that Judge Murphy failed to rule on his motion "protesting the State's use" of the statement Haeg claims he gave during plea negotiations. But Haeg mischaracterizes the motion that was filed seeking dismissal of the charges. Although he moved to dismiss the charges on various grounds, he did not assert that the State had violated Evidence Rule 410. He did not mention this issue until he replied to the State's opposition to his motion to dismiss the information, where he told the court that "[t]here is another piece of information that needs to be addressed." Judge Murphy was not required to rule on Haeg's new contention. A trial court can properly disregard an issue first raised in a reply to an opposition.[21] If Haeg wanted a ruling on this issue, he was obligated to file a new motion asking for one. Because he did not ask for a ruling, he has waived this claim.[22]

Haeg's claim that the district court prejudiced his defense

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[20] See State v. Jones, 751 P.2d 1379, 1381 (Alaska App. 1988).

[21] See Demmert v. Kootznoowoo, Inc., 960 P.2d 606, 611 (Alaska 1998) ("The function of a reply memorandum is to respond to the opposition to the primary motion, not to raise new issues or arguments... ."); Alaska State Employees Ass'n v. Alaska Pub.Employees Ass'n, 813 P.2d 669, 671 n.6 (Alaska 1991) ("As a matter of fairness, the trial court could not consider an argument raised for the first time in a reply brief.").

[22] See Stavenjord v. State, 66 P.3d 762, 767 (Alaska App. 2003); Marino v. State, 934 P.2d 1321, 1327 (Alaska App. 1997).

Haeg contends that Judge Murphy made inconsistent rulings about who — the court or the jury — would determine whether Haeg was "hunting" when he took the wolves. But Haeg has not shown that Judge Murphy's rulings prejudiced his defense. The first ruling that Haeg refers to came when he moved to dismiss the information. There, he argued that the hunting same day airborne charges were improper because he was acting under the authority of the predator control program. In his view, even though he had taken the wolves outside the area where the predator control program was authorized, the State could only charge him for violating the conditions of the permit. Judge Murphy rejected this argument, noting that the State had charged Haeg for taking wolves outside of the permit area. She explained that Haeg might defend against these charges on the grounds that he was acting in accordance with his permit, but that this was a factual issue that would be decided by the fact finder at trial.

The second ruling that Haeg refers to occurred when Judge Murphy addressed Haeg's pre-trial argument that his permit precluded a conviction for any hunting violations. Judge Murphy found that this was a legal question that she, not the jury, had to decide.

Haeg asserts that Judge Murphy's rulings prejudiced his defense because they prevented him from arguing that he was not hunting. But Judge Murphy allowed Haeg to make this very argument.

At trial, the parties had a lengthy discussion concerning Haeg's desire to tell the jury that he was not "hunting" same day airborne when he took the wolves. Haeg's defense was that his conduct was not "hunting" because he was acting under a permit that allowed predator control. He asserted that the statute defining

"predator control" excluded "hunting" and, therefore, "he couldn't have been knowingly violating a hunting law."

Judge Murphy ultimately told Haeg that he could argue to the jury that if the jury found that he was acting in accordance with the permit, then he was not hunting. Consequently, Haeg argued at length during his closing that he was not guilty of hunting same day airborne because his predator control permit allowed him to kill wolves same day airborne. Despite this argument, the jury found Haeg guilty of the hunting charges. Haeg's defense was not prejudiced by Judge Murphy's rulings.

Haeg's claim that the district court failed to give a required jury instruction

Haeg argues that Judge Murphy was required to sua sponte give a jury instruction that Zeller's plea agreement required him to testify against Haeg. But under Criminal Rule 30(b), there are no required jury instructions. Rather, the rule provides that a trial court "shall instruct the jury on all matters of law which it considers necessary for the jury's information in giving their verdict." The rule that required instructing the jury that it should view the testimony of an accomplice with distrust was rescinded in 1975.[23] Because Haeg did not request this or a similar instruction, he has not preserved the issue for appeal.[24]

Haeg's claim that the district court held him to a term of the failed PA

Haeg claims that Judge Murphy unfairly held him to a term of the failed plea agreement. Haeg asserts that this

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[23] See Heaps v. State, 30 P.3d 109, 115 (Alaska App. 2001).

[24] See Alaska R. Crim. P. 30(a) (objections to instructions must be raised before the jury retires to deliberate).

occurred during an exchange between his attorney and the judge during a post-trial status hearing.

The purpose of this status hearing was to establish a date for sentencing and to determine whether a defense witness would be available. The prosecutor indicated that he intended to call witnesses at sentencing in an effort to prove that Haeg had committed uncharged misconduct — in particular, the prosecutor wanted to show that in 2003 Haeg had been involved in unlawfully taking a moose same day airborne.

When Judge Murphy asked why the State had not charged the moose incident along with the current case, the prosecutor explained that initially, during plea negotiations, the parties had discussed litigating the issue at sentencing. Haeg's attorney then said he did not "know how ... [a discussion of a moose case] could be part of any negotiations to the un-negotiated case." Judge Murphy responded, "Well, it was at one point." Haeg argues that in this exchange, Judge Murphy was forcing Haeg to comply with a term of the failed plea agreement. We disagree.

At sentencing, the State is allowed to put on evidence of a defendant's uncharged offenses even when the defendant objects.[25] A sentencing court may consider this evidence if it is sufficiently verified and the defendant is provided the opportunity to rebut it.[26] Here, the record reflects that the State, irrespective of the failed plea agreement, was attempting to show that Haeg had committed an uncharged offense. The State was entitled to do so. We conclude that Judge Murphy did not force Haeg to abide by a term of the failed plea agreement. We note

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[25] See Pascoe v. State, 628 P.2d 547, 549-50 (Alaska 1980) (State allowed at sentencing, over defendant's objection, to put on evidence of defendant's uncharged offenses).

[26] See id.

that she later ruled that the State had not proven that Haeg had committed the uncharged offense and she did not consider it when imposing sentence.

Haeg's claim that the district court erred by not ordering a defense witness to appear at sentencing

Haeg claims that Judge Murphy committed error by not ordering his first attorney to testify at Haeg's sentencing proceedings. Although Haeg subpoenaed this attorney, the attorney did not appear. The record shows that at sentencing Haeg did not ask Judge Murphy to enforce the subpoena or seek any other relief. Consequently, this claim of error is waived.

Haeg's claim that the district court erred when it found that most of the wolves were taken in unit 19C

Haeg asserts that Judge Murphy erred when she found that "a majority, if not all of the wolves taken were in [unit]19C." It is true that the evidence did not show that most of the wolves were killed in unit 19C. But taking Judge Murphy's sentencing remarks in context, we conclude that she found that Haeg was taking wolves unlawfully in an effort to benefit his own guiding operations. This finding is supported by the record.

At trial, Haeg testified that he and Zellers knew that they were killing the wolves outside of the permit area. And the evidence at trial showed that they spent little time looking for wolves in unit 19D-East, the permit area around McGrath. Instead, the first wolves were taken about thirty-five miles from Haeg's hunting lodge, which was located in unit 19C. Haeg took at least one animal just ten miles from his hunting grounds. Zellers testified that he and Haeg wanted the game board to include unit 19C in the predator control program.

In addition, Haeg testified that he guided moose hunts in units 19C and 19B. He admitted that they had killed one of the wolves in unit 19B. And although Haeg testified that he did not guide moose hunts on the Swift River where the rest of the wolves were taken, he conceded that some of the moose taken during his guided hunts come from that area. He testified that he could schedule eight or nine moose hunts in a season and that he charged a significant amount of money per person per hunt. He also testified that he and Zellers killed the wolves because they were frustrated that the wolves were killing so many moose.

Based on this record, we conclude that Haeg has not shown that Judge Murphy committed clear error when she found that Haeg was illegally killing wolves for his own commercial benefit.

Why we find that Judge Murphy intended to suspend, not revoke, Haeg's guide license

While this appeal was pending, Haeg filed a motion requesting that we modify the portion of his sentence revoking his guide license. At that time, we indicated that even if Haeg was entitled to any relief, we would not grant it until we decided the appeal. (We also told Haeg that based on his claim that this portion of the sentence was illegal, he could seek immediate relief from the district court. He apparently did not do so.) Although Haeg did not include this issue in his claims of error, we deem the motion a request to amend his points on appeal and resolve it. For the reasons explained here, we conclude that Judge Murphy intended to suspend Haeg's guide license, not to revoke it.

Judge Murphy ordered the guiding license "revoked for five years." The written judgments reflect the same language. The revocation was part of Haeg's sentence for violating the law and was not a condition of probation.

Under AS 12.55.015(c), Judge Murphy could "invoke any authority conferred by law to suspend or revoke a license." The authority to suspend or revoke a guiding license is provided in AS 08.54.720(f)(3). In Haeg's case, this statute required Judge Murphy to order the game board to suspend Haeg's guide license for a "specified period of not less than three years, or to permanently revoke [it]." But Judge Murphy combined the two alternatives and ordered the license revoked for five years. Under the authorizing statute, Judge Murphy could either order the license suspended for five years or else revoke it permanently. But the statute did not allow her to revoke it for five years.

Although Judge Murphy had the authority to revoke the license, the circumstances indicate that she meant to suspend it. When Judge Murphy imposed sentence, she was using pre-printed judgments that required her to fill in blank spaces. The judgments have a section where various types of licenses can be "revoked" followed by a blank space for the court to insert the length of the revocation. Judge Murphy wrote "for 5 years" in the blank space. But the option to suspend a license was not offered. Because Judge Murphy wrote "5 years" rather than "permanently," we conclude that she meant to suspend the license for a specified period of time rather than to revoke it permanently. We therefore order the district court to modify the judgments in this case to show that Haeg's guide license was suspended for five years.

Haeg's appeal in Case No. A-10015

While his original appeal was pending, Haeg filed a motion in the district court asking for the return of his property that had been seized by the State. Because his case was on appeal, the district court ruled that it lacked jurisdiction to address Haeg's motions. Haeg then asked this court to order his property released. We remanded the case back to the district court "for the limited purpose of allowing Haeg to file a motion for the return of his property[.]"

Once the case was remanded, Haeg — relying on Alaska Criminal Rule 37 — asked the district court to suppress the evidence that had been seized during the criminal investigation and to return the property to him. Haeg argued that the State had violated his fundamental rights by not giving him notice that he had the right to contest the seizure of his property. He also argued that AS 16.05.190 and AS 16.05.195 were unconstitutional on their face and as applied to him because they did not require the State to provide such notice. Magistrate David Woodmancy ordered some property returned, but otherwise denied Haeg's request. Haeg initially petitioned for review of this decision, but we concluded that he had the right to appeal.

Why we uphold the district court's decision not to suppress evidence or return to Haeg property Judge Murphy had ordered forfeited

Haeg contends that Magistrate Woodmancy erred when he refused to suppress the evidence and to return to him the property the State seized during the criminal investigation of this case. The forfeited property consisted of the airplane and the firearms that Haeg and Zellers used when taking the wolves, the wolf hides, and a wolverine hide.

Haeg contends that he was entitled to have the property suppressed as evidence and returned to him

because the State, when it seized the property during the criminal investigation, did not expressly inform him that he had the right to challenge the seizure. He also asserts that the statutes that authorize search and seizure in criminal cases — AS 12.35.020, AS 12.35.025, AS 16.05.190, and AS 16.05.195 — are unconstitutional because they do not require the State to provide owners of seized property with notice that they have the right to challenge the seizure. He claims that the federal and state due process clauses require this notice.

To support his claim under the federal due process clause, Haeg relies primarily on the Ninth Circuit's decision in *Perkins v. City of West Covina*.[27] In *City of West Covina*, police lawfully searched a home where a murder suspect was renting a room.[28] Pursuant to a search warrant, police officers seized property from the home.[29] The police provided the landlord, Perkins, with written notice of the search, an inventory of the property seized, and information necessary for him to contact the police investigators.[30] But the written notice did not explain the procedures for retrieving his property.[31] Although police later told Perkins that he needed to file an appropriate motion in court, Perkins ran into difficulty when he attempted to retrieve his property.[32] Ultimately, he filed a civil suit in federal court, alleging a violation of his constitutional rights in that the notice did not mention he had the right to seek the return of his property.[33]

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[27] 113 F.3d 1004 (9th Cir. 1997), rev'd, 525 U.S. 234, 119 S. Ct. 678, 142 L. Ed. 2d 636 (1999).
[28] Id. at 1006.
[29] Id.
[30] Id. at 1007.
[31] Id.
[32] Id.
[33] Id. at 1007, 1012-13.

The Ninth Circuit ruled that in these circumstances, due process required the government to provide written notice explaining to property owners how to retrieve the property.[34] The Ninth Circuit held that, among other things, "the notice must inform the ... [property owner] of the procedure for contesting the seizure or retention of the property taken, along with any additional information required for initiating that procedure in the appropriate court."[35] The notice "also must explain the need for a written motion or request to the court stating why the property should be returned."[36] Relying on the Ninth Circuit's decision, Haeg contends that the federal due process clause required a similar notice when the state troopers seized his property. But in *City of West Covina v. Perkins*,[37] the United States Supreme Court reversed the Ninth Circuit's decision and rejected the notice requirement imposed by the Ninth Circuit.[38]

The Supreme Court ruled that when police lawfully seize property for a criminal investigation, the federal due process clause does not require the police to provide the owner with notice of state-law remedies.[39] The Court explained that "state-law remedies ... are established by published, generally available state statutes and case law."[40] Once a property owner has been notified that his property has been seized, "he can turn to these public sources to learn about the remedial procedures available to him."[41] According to the Court, "no ... rationale justifies

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[34] Id. at 1012-13.
[35] Id. at 1013.
[36] Id.
[37] 525 U.S. 234, 119 S. Ct. 678, 142 L. Ed. 2d 636 (1999).
[38] Id.
[39] Id. at 240, 119 S. Ct. at 681.
[40] Id. at 241, 119 S. Ct. at 681.
[41] Id. at 241, 119 S. Ct. at 681-82.

requiring individualized notice of state-law remedies."[42] The "entire structure of our democratic government rests on the premise that the individual citizen is capable of informing himself about the particular policies that affect his destiny."[43]

In other words, federal due process is satisfied if the police give property owners notice that their property has been seized and if state law provides a post-seizure procedure to challenge the seizure and seek the return of the property. In Haeg's case, he received notice that his property was seized, and Alaska Criminal Rule 37 provides for a post-seizure procedure allowing property owners to seek return of their property.[44] In light of the Supreme Court's decision in *City of West Covina*, we conclude that Haeg's due process rights under the federal constitution were not violated.

To support his claim under Alaska's due process clause, Haeg relies primarily on the decisions in *F/V American Eagle v. State*[45] and *State v. F/V Baranof*.[46] He points out that under these decisions, property owners have "an immediate and unqualified right to contest the [S]tate's justification" when the State seizes their property.[47] But nothing in either of these decisions imposes a notice requirement similar to that discussed by the Ninth Circuit in *City of West Covina*. Rather, in both cases, the State

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[42] Id. at 241, 119 S. Ct. at 681.

[43] Id. at 241, 119 S. Ct. at 682 (quoting Atkins v. Parker, 472 U.S. 115, 131, 105 S. Ct. 2520, 86 L. Ed. 2d 81 (1985)).

[44] Alaska R. Crim. P. 37(c) ("[Any] ... person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property[.]").

[45] 620 P.2d 657 (Alaska 1980).

[46] 677 P.2d 1245 (Alaska 1984).

[47] F/V American Eagle, 620 P.2d at 667.

provided the property owners notice that their property had been seized.[48] This notice and the subsequent opportunity to challenge the seizures under Criminal Rule 37 satisfied due process.[49] Here, Haeg had notice of the seizure, which in turn provided him with the opportunity to challenge the seizure of his property.

Conceivably, there might be circumstances where the Alaska due process clause would require the government to take affirmative measures to notify a property owner of the right and the procedure to challenge the seizure of his or her property. But nothing in Haeg's case supports a finding that his due process rights were violated. Haeg was present when the troopers searched his residence in Soldotna and seized an airplane of his, a shotgun, and a rifle. Consequently, he knew that his property had been seized as part of a criminal investigation. In addition, less than two weeks after his property was seized, he retained an attorney. Thus, he had access to legal advice regarding the seizure. Finally, Haeg — albeit some months after the seizure — asked the district court to bond out his airplane. Under these circumstances, the fact that the State did not specifically inform Haeg that he had the right to challenge the seizure did not infringe his state due process rights.

Based on the record in Haeg's case, we conclude that neither the federal nor the state constitutions required the State, after giving Haeg notice that his property had been seized, to separately inform him that he had a right to

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[48] See F/V Baranof, 677 P.2d at 1255-56 (in rem forfeiture action holding that due process was provided when owners were notified that property was seized and were given an opportunity to contest the State's reasons for seizing property); F/V American Eagle, 620 P.2d at 666-68 (in rem forfeiture action).

[49] F/V Baranof, 677 P.2d at 1255-56; F/V American Eagle, 620 P.2d at 667.

contest the seizure of his property. Because neither Haeg's federal nor state due process rights were violated, Magistrate Woodmancy did not err when he denied Haeg's post-conviction motion to suppress evidence seized during the criminal investigation. For similar reasons, we reject Haeg's attack on the constitutionality of Alaska's seizure and forfeiture statutes, AS 12.35.020, AS 12.35.025, AS 16.05.190, and AS 16.05.195. Furthermore, we note that Haeg's motion to suppress was waived because he failed to file it prior to trial.[50]

We also conclude that Haeg provided Magistrate Woodmancy no grounds for overturning Judge Murphy's decision to forfeit property related to Haeg's hunting violations. Haeg argued at sentencing against forfeiture of the airplane. At sentencing, Haeg's attorney did not contest the fact that the airplane was the one that Haeg and Zellers used when unlawfully taking the wolves, nor did he claim that Haeg was not the airplane's owner. Rather, he argued that the airplane should not be forfeited because Haeg used the plane "not only for guiding, but ... also ... for part of his economic livelihood of flight seeing, and if ... [the court forfeits] his plane ... he won't even be able to do that ... . [M]aybe over the next few years ... he's going to have ... to beef up more work for his flight seeing business, ... [and with the airplane] at least he'd have the means to do it." The attorney emphasized that "if you take his plane ... he'd be out of the guiding business, he'd be out of the flight seeing business, he'll just be out of business. Period. After twenty-one years of an occupation, just it's gone." Haeg did not object to the forfeiture of the shotgun, the rifle, or the animal hides. The record supports these forfeitures. At trial, Zellers testified that they had specifically purchased the shotgun to use for the predator

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[50] See Alaska R. Crim. P. 37(c); Alaska R. Crim. P. 12(b) and 50 (c).

control program and that they used it to unlawfully take the wolves. Zellers also testified that the rifle was used to unlawfully take one wolf. And finally, Haeg testified that he and Zellers had taken the animal hides unlawfully. Because the record supports Judge Murphy's forfeiture of the property relating to Haeg's hunting violations and Haeg did not show why the decision to forfeit this property should be overturned, we affirm Magistrate Woodmancy's decision to not return the forfeited property to Haeg.

Haeg also claims that Magistrate Woodmancy erred when he resolved Haeg's motion to suppress evidence and return of property without an evidentiary hearing. But Haeg has not shown that Magistrate Woodmancy abused his discretion. The basis of Haeg's post-conviction motion was his assertion that the State, when it seized Haeg's property, was required to tell him that he had a right to challenge the seizure. This was a question of law that Magistrate Woodmancy could resolve without an evidentiary hearing. And as we have already explained, the State was not required to notify Haeg that he had a right to challenge the seizure of his property.

Other potential claims

Haeg's briefs and other pleadings are sometimes difficult to understand, and he may have intended to raise other claims besides the ones we have discussed here. To the extent that Haeg may be attempting to raise other claims in his briefs or in any of his other pleadings, we conclude that these claims are inadequately briefed.[51]

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[51] See Petersen v. Mutual Life Ins. Co. of New York, 803 P.2d 406, 410 (Alaska 1990) (issues that are only cursorily briefed are deemed abandoned); see also A.H. v. W.P., 896 P.2d 240, 243-44 (Alaska 1995) (waiving for inadequate briefing majority of fifty-six arguments raised by pro se appellant).

Conclusion

Haeg's convictions are AFFIRMED. The district court shall amend the judgments to reflect that Haeg's guide license was suspended for a period of five years."

APPENDIX B

July 29, 2005 – In the District Court for the State of Alaska at McGrath, State v. Haeg, Case No. 4MC-04-024 Cr., Jury Verdict.

CONTINUATION SHEET

Tape 4MC-05-2 Page No. 17 Case No. 4MC-04-24CR
Date: 7/29/05

Log Number	Description	
0155	On Record 11:20 pm	Jury Present
0155	Ct – Jury reached verdict	
	CT I	Guilty
	CT II	Guilty
	CT III	Guilty
	CT IV	Guilty
	CT V	Guilty
	CT VI	Guilty
	CT VII	Guilty
	CT VIII	Guilty
	CT IX	Guilty
	CT X	Not Guilty
	CT XI	Not Guilty
0176	CT – Polls jury. Thanks and excuses jury. Sentence to be done later. I will get with Mag. Woodmancy & check calendar – will set up time to do status.	
	Leaders – Not in on Friday.	
0223	Off record 11:29 p.m.	

APPENDIX C

September 26, 2008 - In the Court of Appeals of the State of Alaska, Haeg v. State, Petition for Rehearing Order, No. A-9455/A-10015, dated 9/26/08:

Before Coats, Chief Judge, Mannheimer, and Steward, Judges.

"On consideration of the Petition for Rehearing filed on 9/19/08, IT IS ORDERED: The Petition for Rehearing is DENIED.

Entered by the direction of the court.
Clerk of the Appellate Courts
"s/"
Marilyn May"

APPENDIX D

December 1, 2008 – In the Supreme Court of the State of Alaska, Haeg v. State, Petition for Hearing Order, No. S-13305, dated 12/1/08:

Before Fabe, Chief Justice, and Matthews, Eastaugh, Carpeneti, and Winfree, Justices.

"On consideration of the petition for hearing filed 10/11/08 and the response filed 11/7/08, IT IS ORDERED: the petition for hearing is DENIED.

Petitioner's motion for reconsideration of the 10/23/08 order denying stay of trial court proceedings is DENIED as moot upon review.

Entered by direction of the court.
Clerk of the Appellate Courts
"s/"
Marilyn May"

APPENDIX E

May 9, 2005 – In the District Court for the State of Alaska at McGrath, State v. Haeg, Case No. 4MC-04-024 Cr., Order Denying Motion to Dismiss.

ORDER DENYING MOTION TO DISMISS

I . Introduction

On November 5, 2004, the Defendant, David Haeg (Haeg), was charged with five counts of Unlawful Acts by a Guide, two counts of Unlawful Possession of Game, one count -of Unsworn Falsification, two counts of Trapping i n a Closed Season, and one count of Failure t o Salvage Game. Haeg was arraigned on these charges on November 9, 2004 in the McGrath District Court. On April 4, 2005, Haeg moved to dismiss the charges. The State opposed the motion. For the reasons below, the Court denies Defendant's motion to dismiss.

II. Facts

In March 2004, Trooper Brett Gibbens (Gibbens) observed a plane following wolf tracks outside the permitted predator control area on the Windy Fork of the Big River. Gibbens began an investigation, which resulted in locating kill sites alleged to be outside of t h e permitted predator control area. Gibbens saw Haeg's plane in McGrath and identified Haeg' plane as t h e plane he had seen following wolf tracks outside of the permitted area. During his investigation, Gibbens found wolf and wolverine traps that allegedly were seen in use after the closing date of trapping season. In addition, Gibbens learned that Haeg had signed the certificates reporting that all the wolves had been killed within the permitted predator control area. The State filed an Information in November 2004 charging

Haeg with eleven counts. Prior to his arraignment, the State filed an amended Information. Haeg was arraigned on t h e amended Information on November 9, 2004.

III. Discussion

Haeg moved t o dismiss this case alleging that the amended Information does not contain a sworn probable cause statement in violation of his constitutional rights, that the charges of Unlawful Acts by a Guide violated his right t o equal protection, and that the charges of Unlawful Acts by a Guide f a i l e d to state a crime for which Haeg can be prosecuted. The State opposed the motion stating that the filing of the seconded amended Information made the issue of the unsworn statement moot, that charging Haeg with Unlawful Acts by a Guide does not v i o l a t e his right to equal protection, and that the counts of Unlawful Acts by a Guide allege that Haeg killed the wolves outside the permitted predator control area; therefore, the permit *is* not applicable and the counts are properly charged.

Haeg's first argument is based on the State's failure to swear to the probable cause statement in the Information or amended Information that was filed in November 2004. Haeg cites Criminal Rule 9 concerning issuance of a warrant or summons. Haeg is correct in his assertion that prior to the issuance of a warrant or a summons an information must be supported by oath. In this case, no warrant or summons was issued. Criminal Rule 7 (c) defines an information as "plain, concise and definite written statement of the essential facts constituting the offense charged." The Information and amended Informations filed by the State clearly meet the requirement stated in Criminal Rule 7(c). Haeg has not

provided any authority,[1] nor has the court found any, which requires an information to be sworn to when no warrant or summons is issued. The information in this case did what is required-it informed the defendant of the charges against him.

The second argument is that charging Haeg with Unlawful Acts by a Guide[2] rather than Same Day Airborne Hunting[3] violates his constitutional rights of equal protection and due process because these two statutes have different punishments. Haeg argues that he is similarly situated to other permit holders in the wolf predator control program; and therefore, should be subject to the same penalties. This argument fails for several reasons. First, the prosecutor has discretion to determine what charges should be brought.[4] In addition, the charges, Unlawful Acts by a Guide and Same Day Airborne Hunting, a r e not the same. In order to prove that Haeg committed the offense of Unlawful Acts by a Guide, the State must prove the additional element that Haeg was a licensed guide. It is not necessary t o prove that someone was a licensed guide at the time the offense was committed in order to show a violation of Same Day Airborne Hunting. Haeg has not

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[1] Haag provided numerous authorities that showed that other jurisdiction would find that a sworn probable cause statement was necessary for the court to have subject matter jurisdiction. These cases, some of which dated back to the 1800's, were not persuasive in light of Alaska Rules of Court Criminal Rule 7.

[2] AS 08.54.720(a)(15). Haeg refers to being charged under AS 08.54.720(a)(8)(A) throughout his argument. In the original Information, Haeg was charged with violating AS 08.54.720(a)(8)(A), but in both amended Informations, he is charged with violating AS 08.54.720(a)(15).

[3] AS 16.05.783.

[4] See Bell v. State, 598 P.2d 908 (Alaska 1979) and Part v. State, 702 P.2d 651 (Alaska App. 1985).

alleged that the decision to charge was based on his race, religion, or other arbitrary classification, which would violate equal protection rights. Since the prosecutor has discretion to decide what charges may be brought and the charges are not the same, Haeg's argument fails.

Haeg's equal protection argument also fails because Haeg is being treated the same as other guides that hold a permit in the wolf control program. Although Haeg claims that there is no rational reason to treat guides differently than those who are not guides, he does not support this statement. Fish and game are a heavily regulated area in Alaska. It appears from the numerous laws and regulations promulgated about fish and game that the State takes a great interest in this area. The State has proscribed different punishments for individuals who have licenses in highly regulated areas from those who do not have such a license.[5] For example, individuals with commercial driver's licenses are subjected to more severe penalties for driving offenses than those with a regular driver's license. There does appear t o be a rational basis for treating licensed guides with permits differently from those who are not guides. Therefore, Haeg's request to dismiss based on equal protection violations is denied.

The final argument for dismissal is that the charges of Unlawful Acts by a Guide do not state an offense for which Haeg can be prosecuted. Haeg's argument is confusing. His argument is that since obtaining a permit to participate in the wolf control predator program does not require a hunting license, then he cannot be charged with violating a hunting statute or regulation. The allegations in this case are that Haeg was not in the permitted

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[5] The State did not address this issue raised by Haeg, but the court believes that it should be addressed.

predator control area when he and his shooter took the wolves. Obviously, if Haeg was acting i n accordance with a permit then that would be a defense to the charges, but that would be a factual issue to be decided at trial. If, as alleged, Haeg was outside the permitted area then the requirements to obtain a permit are not related to what offenses could be charged. This argument for dismissal must be denied.

IV. Conclusion

For the reasons above, the Court denies Defendant's motion to dismiss.

IT IS SO ORDERED.

Dated at Aniak, Alaska on this 9th day of May, 2005.

"s/"
Margaret L. Murphy
Magistrate

APPENDIX F

May 17-18, 2005 – In the District Court for the State of Alaska at McGrath, State v. Haeg, Case No. 4MC-04-024 Cr., Tape No. 4MC-05-06. Verbal order.

Judge Murphy: "[Y]ou [Robinson] can't argue as a matter of law he [Haeg] was not hunting."

APPENDIX G

August 24, 2005 – In the District Court for the State of Alaska at McGrath, State v. Haeg, Case No. 4MC-04-024 Cr., Tape No. 4AK-05-36. Verbal order.

Leaders "[I]t became an issue in negotiation, prior to Mr. Robinson being involved, and we just maintained that position... if convicted of the wolf offenses we would use it as to enhance sentence."

Robinson "I don't know how that could be part of any negotiations to the un-negotiated case."

Judge Murphy "Well it was at one point."

Robinson "Well it wasn't on the charges that he went to trial on which was -you know- the charges that you said were different and that he plead not guilty to. So there's no agreement to that."

APPENDIX H

September 30, 2005 – In the District Court for the State of Alaska at McGrath, Case No. 4MC-04-024 Cr., Judgment – Fish and Game.

State of Alaska vs. David Haeg
ATN Tracking No. **Count I**
DOB 1/19/66 ID # 5743491 ATN. 107137278

JUDGMENT – FISH & GAME

Date of Offense: March 5, 2004
Statute/Ord./Reg. AS8.54.72(a)(15)
Offense Charged: Unlawful Acts by a Guide: Same Day Airborne
Misdemeanor Violation

PLEA: (X) Not Guilty **TRIAL**: (X) Jury

The defendant was found and adjudged:
(X) GUILTY of the offense named above.

SENTENCE

(X) Sentence is imposed as follows:

Police training surcharge due in 10 days: (X)$50
Misdemeanor

Defendant is fined $2500.00 with $1500.00 suspended. The unsuspended $1000.00 is to be paid to the McGrath District Court, P.O. Box 147, Aniak, AK 99557 by 9/30/07.

Defendant is committed to the custody of the Commissioner of Corrections to serve 60 days with 55 (days)

suspended. The unsuspended 5 (days) are to be served at the direction of the jail. Remand date 11/1/05 at 2:30 pm at Kenai Court.

(X) The following items are forfeited to the State:

(X) The seized fish or game or any parts thereof: Wolf Hides;

(X) Equipment used in or in aid of the violation: Piper PA-12 plane tail number N4011M, Guns and ammunition.

(X) Defendant's (X) Guiding license is revoked for 5 years.

(X) The defendant is ordered to pay restitution as stated in the Restitution Judgment and to apply for an Alaska Permanent Fund Dividend, if eligible, each year until restitution is paid in full.

(X) Defendant is placed on probation for 7 year(s), subject to the following conditions:

(X) Comply with all direct court orders listed above by the deadlines stated.

(X) Commit no hunting, trapping, or big game guiding violations during the probation period.

(X) Not participate in any way with any predator control program.

Effective Date: 9/30/05
"s/"
Margaret L. Murphy, Judge

APPENDIX I

November 13, 2006 – In the District/Superior Court for the State of Alaska at Kenai, Alaska, Order, Search Warrants: 4MC-04-001SW, 4MC-04-002SW, & 4MC-04-003SW:

"Having considered David Haeg's Motion for Return of Property and to Suppress Evidence, and there being good cause shown;

IT IS ORDERED: David Haeg's above motion to return all property is hereby DENIED.

*Subject matter and issues raised are the jurisdiction of the Court of Appeals.

Dated: 11/13/06

"s/"

Judge David Landry"

APPENDIX J

November 16, 2006 - In the Court of Appeals of the State of Alaska, Order, No. A-9455, dated 11/16/06.

Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

"Haeg has filed a motion for the return of certain property seized by the State in this case. From the limited record before us, it appears that property was seized under the authority of a search warrant. Alaska Criminal Rule 37(c) provides an opportunity for a person to seek the return of property seized under a search warrant. Apparently, however, Haeg has not filed a motion under Criminal Rule 37(c).

Haeg still has the opportunity to ask the trial court for return of the property. Alternatively, the State may seek to forfeit the property. All of these issues are matters which Haeg or the State must first raise in the trial court. And the trial court must decide these issues before Haeg (or the State) can ask for appellate review. For this reason, Haeg's current motion - asking this Court to order the return of his property - is not proper at this time.

Haeg also asks this court to stay his appeal until his post-conviction relief application is decided. But the law allows Haeg to pursue an appeal and a petition for post-conviction relief at the same time. We therefore deny Haeg's request to stay his appeal.

Haeg asks to supplement the record on appeal with various items that apparently were not presented to the trial court. That motion is denied. The record on appeal is to consist solely of evidence and documents presented to the

trial court during the proceedings that we are being asked to review. See Appellate Rule 2 10(a).

Haeg asks this Court to grant him summary judgment on his appeal. The Appellate Rules do not provide for this Court to grant summary judgment in an appeal.

Haeg also asks this court to modify the portion of his sentence that calls for revocation of his guide license. We have the power to grant this kind of relief only if the trial court had no legal authority to revoke Haeg's license, or if the trial court was clearly mistaken in deciding to impose a license revocation as opposed to a suspension. In either event, we would not grant such relief until we decided Haeg's appeal.

Finally, Haeg asks us to stay the revocation of his guide license. This type of request is governed by Appellate Rule 206(a)(4). Under this rule, a defendant's request to stay the revocation or suspension of a license must first be presented to the trial court. Haeg can ask this Court to intervene only if the trial court does not grant his request.

If Haeg has already asked the trial court for a stay, and if his request was denied, Haeg can again ask this Court review the matter. However, Haeg must inform this Court not only of his reasons for seeking a stay, but also of the trial court's reasons for denying the requested stay.

Entered at the direction of the Court.
Clerk of the Appellate Courts
"s/"
Shannon M. Brown, Deputy Clerk"

APPENDIX K

December 29, 2006: In the Court of Appeals of the State of Alaska, No. A-9455, Haeg v. State, Order, Date of Order: 12/29/06

Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

In his motion for clarification filed with this Court on November 27, 2006, Haeg represents that he has moved in the district court for a return of his property on numerous occasions but that the trial court has denied these motions on the ground that is has no jurisdiction because the Court of Appeals has jurisdiction over his case.

The State did not respond to the issues which Haeg raised in his motion for clarification, other than to indicate that it believed no response was required unless this Court directed otherwise. We direct the State to respond to Haeg's claim that the trial court has refused to decide the merits on Haeg's various motions for the return of his property. The State shall inform us on or before *1/16/07* of the proceedings which have taken place in the trial court with respect to property which the State seized in connection with this case.

Entered at the direction of the Court.

Clerk of the Appellate Courts
"s/"
Shannon M. Brown, Deputy Clerk"

APPENDIX L

March 13, 2007 – In the District Court for the State of Alaska at McGrath, Case No. 4MC-04-024 Cr., Verbal Order.

Magistrate Woodmancy: "There will be no evidentiary hearing - no cross-examination of adverse witnesses, no presenting evidence or witness testimony, and no oral argument, just a couple lines why you think you should get your property back."

APPENDIX M

April 12, 2007 - In the Court of Appeals of the State of Alaska, Haeg v. State, Order, No. A-9455, dated 4/12/07

Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

"On consideration of the Petition for Review filed on 3/20/07, and the response filed on 3/27/07,

IT IS ORDERED: The Petition for Review is DENIED.

Entered by direction of the court.
Clerk of the Appellate Courts
"s/"
Marilyn May"

APPENDIX N

May 25, 2007- In the Supreme Court of the State of Alaska, Haeg v. State, Petition for Hearing Order, No. S-12695, dated 5/25/07:

Before Fabe, Chief Justice, and Matthews, Eastaugh, Bryner, and Carpeneti, Justices.

"On consideration of the Petition for Hearing filed on 4/23/07, and the response filed on 5/2/07,

IT IS ORDERED:

The Petition for Hearing is DENIED.

Entered by direction of the court.
Clerk of the Appellate Courts
"s/"
Marilyn May"

APPENDIX O

July 3, 2007 - In the Court of Appeals of the State of Alaska, Haeg v. State, Order, No. A-9455, dated 7/3/07

"On 6/28/07, David Haeg filed his response to order of 6/8/07. In this response he motions the court for stay of his appeal. The State of Alaska filed their opposition on 6/27/07.

IT IS ORDERED: The motion for stay is DENIED. This court has already ruled on Haeg's prior motions. Haeg needs to file his post conviction relief action in the trial APPcourt.

Entered by direction of Chief Judge Coats.
Clerk of the Appellate Courts
"s/"
Shannon M. Brown, Deputy Clerk"

APPENDIX P

July 23, 2007 – In the District Court for the State of Alaska Fourth Judicial District at McGrath, Haeg v. State, Order on Motion for Reconsideration and Clarification, No. 4MC-04-24 CR, dated 8/17/07:

"Haeg's Motion for the Suppression of Evidence is Denied. Because it should have been filed as a pre-trial motion.

Mrs. Haeg's Motions are Denied as she is not a party to this action.

Haeg's Motion for the Return of Property is Granted in part.

Haeg is entitled to the return of the following property only.

The State will return to Mr. Haeg the following items:

(1) Item 504 - five pair of bunny boots
(2) Item 505 - one pair of bunny boots
(3) Item 507 - camera
(4) Item 508 - camera
(5) Item 510 – rope
(6) Item 511 – satellite telephone
(7) Item 513 – shotgun shells
(8) Item 514 – wolf snares
(9) Item 515 – maps
(10) Item 516 – bag of ammo
(11) Item 517 – two quarts of oil
(12) Item 518 – green cord
(13) Item 520 – aeroshell oil
(14) Item 521 – white cord

The above property is located at the Soldotna Alaska State Trooper Post and must be claimed no later than September 1, 2007.

If the property has not been claimed by September 1, 2007 it may be disposed of in accordance with Alaska Statute and established procedure.

All property forfeited in the criminal judgments will remain in the custody of the state.

This case is returned to the Appellate Court. IT IS HEREBY ORDERED.

Effective Date: July 23, 2007
"s/"
David Woodmancy, Magistrate
Aniak & McGrath District Court"

APPENDIX Q

August 17, 2007 – In the District Court for the State of Alaska Fourth Judicial District at McGrath, Haeg v. State, Order on Motion for Reconsideration and Clarification, No. 4MC-04-24 CR, dated 8/17/07:

"Defendant David Haeg's motion for reconsideration and clarification is DENIED.

Mr. Haeg's case was remanded for the sold purpose of ruling on the return of property.

Mr. Haeg attempted to use the remand to file a motion to suppress evidence that had already been admitted at his trial. This part of his Motion was not consistent with the remand from the Appellate Court and was DENIED.

Mr. Haeg also motioned for a ruling on the constitutionality of AS 15.05.190 and AS 16.05.195, this part of his motion was not consistent with the remand from the Appellate Court and was DENIED.

Mr. Haeg also alleges "facts" that are not in evidence. His assertion that the warrants were based upon perjury is not "fact" at all but an allegation.

Mr. Haeg prevailed in is motion for the return of his property in that the property not submitted into evidence was returned. The property admitted into evidence and or forfeited remains in the custody of the State pending the outcome of his appeal. IT IS HEREBY ORDERED.

Effective Date: August 17, 2007
"s/"
David Woodmancy, Magistrate

APPENDIX R

March 26, 2008 - In the Court of Appeals of the State of Alaska, Haeg v. State, Order, No. A-9455, Date of order: 3/26/08:

"On consideration of the appellant's emergency motion to restore the record, and a no opposition having been received,

IT IS ORDERED: The motion is GRANTED.

Entered at the direction of Chief Judge Coats.
Clerk of the Appellate Courts
"s/"
Shannon M. Brown, Deputy Clerk"

APPENDIX S

January 26, 2009 - In the District Court for the State of Alaska at McGrath, State v. Haeg, Imprisonment Order, No. 4MC-04-24 CR:

Alaska Court System
P.O. Box 147
Aniak, AK 99557-0147
Phone: (907) 675-4325
Fax: (907) 675-4278

ANIAK DISTRICT COURT

Fax

To: David Haeg From: Magistrate David H. Woodmancy
Fax: Pages: 33 (including cover sheet)
Phone: Date: 1/27/2009
Re: Judgments

Comments:
Mr. Haeg, you will need to remand (turn yourself in) at the Kenai Courthouse-on March 2, 2009 at the Court Judicial Services Office. They are open from 8:00 A.M, to 4:30 P.M. and you can remand any time between 8:00 A.M and 4:00 P.M.

Also included in this fax (copies will also be sent in the mail) is the amended judgments reflecting that your license was suspended not revoked for 5 years and a new remand date.

I have spoken with the staff at Wildwood and they will make arrangements for you to attend the March 9, 2009 hearing on your fines and restitution due dates.

State of Alaska vs. David Haeg
DOB: 1/19/66 DOV: 3/5/04

Original Charge: *See Attached Judgments*

(x) Defendant is not in custody on this charge.

INSTRUCTIONS TO JAIL

(x) COMMITMENT. It is ordered that the above-named defendant be held in custody:

(x) pending receipt of formal judgment Defendant was sentenced as follows. *CT I 5 days/ CT II 5 days/ CT III 5 days/ CT IV 5 days/ CT V 5 days/ CT VIII 10 days – 35 days total.*

(x) FINGERPRINT BEFORE RELEASE (x) OTHER INSTRUCTIONS. *Mr. Haeg is to remand on March 2, 2009 by 4:00 p.m. to the Judicial Services Office in the Kenai Court House.*

NEXT COURT APPEARANCE

DATE: March 9/09 TIME: 11:00 AM PLACE: McGrath
(x) Other: Set fine due date

Defendant (x) is not represented by counsel – Pro Se

January 26, 2009
Date

"s/"
David H. Woodmancy
Magistrate

APPENDIX T

January 30, 2009- In the Supreme Court of the State of Alaska, Opinion No. 6334 – January 30, 2009, Supreme Court No. S-12771, Superior Court No. 3KN-06-844 CI.

DAVID S. HAEG, Appellant v. BRENT R. COLE, Appellee

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Kenai, Harold M. Brown, Judge.

Appearances: David S, Haeg, pro se, Soldotna, Brent R, Cole, pro se, Anchorage.

Before: Fabe, Chief Justice, Matthews, Eastaugh, Carpeneti, and Winfree, Justices.

PER CURIAM

David Haeg appeals the decision of the superior court that affirmed an arbitration award regarding fees charged by Haeg's former attorney, Brent Cola. Haeg hired Cole to represent him in a criminal case and paid for most of Cole's services. When plea negotiations broke down, Haeg fired Cole and refused to pay the outstanding balance of Cole's fee. Haeg hired another attorney, went to trial, and lost. Haeg then filed a fee arbitration proceeding with the Alaska Bar Association, arguing that Cole's services were defective and that Cole should return the fees Haeg had paid. The arbitration panel decided in Cole's favor and awarded Cole the fees still outstanding. Haeg appealed to the superior court. The superior court modified the amount of the award to remedy a clerical error and otherwise affirmed the panel's decision. Haeg now appeals the superior decision to this court. With one exception, we

affirm the decision of the superior court for the reasons expressed in the written decision of the superior court.[1]

The exception concerns the arbitration panel's affirmative award to Cole of fees still due him. This amount, as corrected by the superior court, was $1,689,1. Under the Revised Uniform Arbitration Act applicable in Alaska, a reviewing court is required to modify or correct an award if the arbitrator has made the award on a claim not submitted to the arbitrator.[2] This statute is applicable to attorney fee arbitration awards under Alaska Bar Rule 40(t).[3] Cole did not present a claim for unpaid fees to the arbitration panel. The award to him of unpaid fees was therefore an award on a claim not submitted.[4] On remand we direct that the order of the superior court be modified by deleting the affirmative award of fees in favor of Cole.

For these reasons the decision of the superior court is MODIFIED in one respect and as so modified, the decision is AFFIRMED, This case is REMANDED with directions to the superior court to modify the decision in accordance with this opinion.

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[1] The superior court's decision is appended.

[2] AS 09.43.510(a)(2).

[3] Alaska Bar Rule 40 implies that only questions submitted should be decided. In relevant part, Bar Rule40(q) states: "The decision will be in writing . . . the decision will include . . . the findings of the arbitrator or panel on all issues and questions submitted which are necessary to resolve the dispute." Alaska Bar R. 40(q)(3).

[4] Haeg's petition for arbitration sought only the fees he had already paid Cole and stated that Cole did not seek any further payments from Haeg. Cole confirmed to the arbitration panel that he was not seeking unpaid fees. At one point in the proceedings members of the panel told Haeg that "the only subject here is ... [t]he fee that you've already paid." We note that at oral argument before this court Cole also waived any interest in an affirmative recovery.

APPENDIX

IN THE SUPERIOR COURT FOR THE
STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID S. HAEG	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
BRENT R. COLE,	)	Case No.: 3KN-06844 CI
	)	
Appellee.	)	
	)	

MEMORANDUM DECISION AND ORDER

David S. Haeg appeals the August 25, 2006 decision of the Alaska Bar Association Fee Arbitration Panel ("panel") awarding Brent Cole $2,689.19. The Appellant alleges ten points on appeal, arguing that the award was procured by fraud, there was corruption among the arbitrators, there was partiality among the arbitrators, the arbitrators exceeded their powers, the arbitrators' decision did not address the issues the appellant presented, the arbitrators did not make a referral to discipline the appellant's counsel, the decision did not reflect the evidence, the decision did not comply with the Alaska Rules of Professional Conduct or Alaska Bar Rule 40, a large portion of the official record of the proceedings has been lost, and that the decision and award are in violation of the U.S. and Alaska Constitutions.

For the reasons set forth below, the court modifies the judgment of the panel to reflect the correct judgment of $1,689.19.

CASE HISTORY

Both parties offer their own versions of what occurred during the course of proceedings of the Appellant's criminal trial. However, the factual history of the Appellant's criminal case is a matter reserved for his criminal appeal. The only issue before this court on appeal is whether there is a basis to vacate or modify the panel's decision. Therefore, the court only offers an abbreviated case history to the point that it is relevant to the current appeal.

The Appellant, David Haeg, retained the Appellee, Brent Cole, as his counsel on April 9, 2004 after learning that he was the subject of an investigation concerning Fish and Game violations. The Appellant signed a fee agreement with the Appellee, agreeing to pay $200.00 per hour for the Appellee's services. The Appellee sent the Appellant monthly bills and represented the Appellant through the summer and fall of 2004. Both parties offer differing versions of events of how the criminal case progressed, but it appears that the panel accepted the version presented by the Appellee. The only facts that are relevant on this appeal are that the Appellant fired the Appellee during these criminal proceedings prior to the time a plea agreement could be entered, that the Appellant proceeded to take his case to trial with a new attorney, and that the Appellant was convicted at trial. The conviction led to the judge suspending the Appellant's hunting guide license for five years and forfeiting his PA- 12 aircraft.

The Appellant still had an amount left owing on his fee agreement when he fired the Appellee, which he refused

to pay. The Appellee did not pursue the Appellant for this unpaid amount and appeared willing to write the losses off The Appellant then filed grievances against the Appellee with the Bar and requested that the Appellee be referred for discipline. The Appellant subsequently filed for fee arbitration in an amount that exceeded $5,000.00. Pursuant to Bar Rules, an arbitration panel was convened. After oral argument, the panel issued a decision on August 25, 2006 that awarded the Appellee the unpaid portion of his fee agreement. This appeal followed.

STANDARD OF REVIEW

Alaska employs mandatory fee arbitration between clients and attorneys if a client commences such an action.[1] The court is to give great deference to the arbitrator's findings of fact and law, and is "loathe to vacate an award made by an arbitrator."[2] In reviewing the award of a fee arbitration committee, the court cannot review the panel's findings of fact, even if the findings were in gross error.[3] Further, the court cannot review the decision on its merits.[4] The court can only review the decision based on the reasons set forth in AS 09.43.120 through AS 09.43.180.[5] Therefore, in reviewing this appeal, the court will only vacate the award if it finds the Appellant has proven the factors under AS 09.43.120(a) and will only modify the award if the Appellant has proven the factors under AS 09.43.130(a).

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[1] Alaska Bar Rule 34(b).

[2] Butler v. Dunlap, 931 P.2d 1036, 1038 (Alaska 1997) (quoting Depart Of Pub. Safety v. Public Safety Employees, 732 P,2d 1090, 1093 (Alaska 1987)).

[3] Breeze v. Sims, 778 P.2d 215,217-18 (Alaska 1989).

[4] A. Fred Miller v. Purvis, 921 P.2d 610, 618 (Alaska 1996).

[5] Alaska Bar Rule 40(a)(2).

DISCUSSION

The Appellant uses his brief to argue the merits of his criminal case. However, the issue before this court is not whether the Appellant's conviction should stand. That issue is reserved solely for the Appellant's criminal appeal. The court further cannot reassess the evidence presented before the panel or the credibility of the witnesses. The court is limited to finding whether the award made by the arbitrators may be modified or vacated pursuant to AS 09.43.120 and AS 09.43.130.

The Appellant argues that the panel's decision should be vacated because the Appellee perjured himself at the panel. He also argues that the evidence he presented against the Appellee was numerous and of significant weight. He claims that the panel's acceptance of the Appellee's testimony over his evidence shows corruption and partiality on the part of the arbitrators. However, the fact that the arbitrators weighed the evidence in a manner unfavorable to the Appellant is not evidence of corruption. There is no doubt that the Appellant believes his evidence was more credible than that of the Appellee, but again, this court is without the authority to reassess the credibility of the witnesses or the weight of the evidence presented to the panel. Therefore, the court does not find the fact that the panel accepted the Appellee's testimony as more credible than the Appellant's evidence as an indication of corruption and will not vacate the award on this point.

The Appellant argues that the fact the panel consisted of two attorneys and one full-time court employee suggests partiality among the arbitrators for the Appellee. The court finds no merit to the Appellant's argument. Pursuant to Alaska Bar Rule 37(c), an arbitration panel consists of two attorneys and one member of the public. The

fact that the panel consisted of attorneys and a court employee is not evidence of bias.

The Appellant argues that there is clear indication of bias and corruption among the arbitrators because their decision and award does not reflect the testimony and evidence the Appellant presented before the panel. The Appellant contends that he overwhelmingly proved that the Appellee perjured himself to the panel that the panel ignored this evidence and helped the Appellee in his case. Again, this court does not reassess the weight of the evidence or review the facts presented to the panel. The fact that the panel accepted the Appellee's version of events does not indicate bias or corruption among the arbitrators.

The Appellant further contends that the panel was corrupt and bias because it stated that the Appellant only identified three failures of the Appellee when the Appellant argued he should be excused from paying the fee. The Appellant claims that he argued numerous other issues to the panel, reiterating that the Appellee perjured himself numerous times and that the Appellee intentionally lied to the Appellant during the course of his representation. Again, the fact that the panel chose to reject the Appellant's arguments is not evidence of bias or corruption. The panel expressly stated that it could not find evidence to support the Appellant's arguments during the arbitration. While the court again acknowledges that the Appellant believes he met this burden, it is without authority to reassess the panel's factual determination and does not find evident bias among the arbitrators in choosing to exclude some of the Appellant's arguments in its decision.

The Appellant offers other argument regarding evidence of bias and corruption among the arbitrators, but it is again repetitive of what has already been stated. Pursuant to AS 09.43.120(a), a court may only vacate the

panel's award if: (1) the award was procured by fraud or other undue means; (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party; (3) the arbitrators exceeded their powers; (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection. This court cannot find that the Appellant has met his burden in proving evident partiality or corruption among the arbitrators. While the court acknowledges that the Appellant believes he presented sufficient evidence to support a different award, this court cannot reassess the facts presented to the panel. The court can only look to see if there was evident partiality and corruption among the arbitrators. Upon reviewing the record, the court is unable to make this determination and finds that the panel acted within their powers when making the award. Even if the Appellant presented a magnitude of evidence to the panel that supported his claim, this would not be enough for the court to vacate the award. This court is without authority to vacate an award due to "fraud or other undue means" even if the panel made gross errors in their decision.[6] The only argument the Appellant offers repeatedly to prove his contention of fraud, evident partiality, and corruption among the arbitrators is that the panel issued a decision in favor of the Appellee despite of what he claims is "overwhelming" evidence in support of his position. This is

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[6] Alaska State Housing Authority v. Riley Pleas. Inc., 586 P.2d 1244, 1247 (Alaska 1978).

not evidence of "evident" partiality. For the court to find bias among the arbitrators on this basis would require the court to inquire into the merits of the panel's decision. As stated multiple times, this court is without authority to do so. Therefore, the court must defer to the panel and upholds the panel's decision to award the Appellee his fees.

Finally, the Appellant contends that the panel exceeded its powers by awarding the Appellee funds that he never requested. He further argues that the arbitration panel awarded the Appellee a $1,000.00 more than the Appellee was owed. The Appellant suggests that this also demonstrated corruption on the part of the arbitrators, as the Appellee had never requested these fees.

The court disagrees that the panel exceeded its power to make this award. When the Appellant pursued fee arbitration, his fee agreement with the Appellee became a proper matter for consideration. The fact that the Appellee had elected not to pursue the Appellant for the remainder of his undue balance prior to the Appellant's commencement of this action did not constitute a waiver that would prevent the panel from considering this issue. At the panel, the arbitrators were presented with the parties' fee agreement. The Appellant did not dispute that he entered into a fee agreement for $200 per hour with the Appellee. The Appellant did not dispute the time sheets presented by the Appellee that demonstrated the time spent by the Appellee working on the Appellant's case. The Appellant only challenged a charge reflecting air travel to McGrath, and the Appellee agreed that this was an improper charge. The Appellant acknowledged that he had not paid the remainder left owing on the parties' fee agreement, which reflected an amount of $2,059.19. The Appellant only challenged the quality of the Appellee's services. The panel concluded that the Appellee had effectively represented the Appellant and awarded the

Appellee the amount left owing on the parties' fee agreement.

The Appellant made his fee agreement with the Appellee a proper issue for consideration when he decided to pursue fee arbitration and cannot argue waiver now. Therefore, pursuant to AS 09.43.120(a)(3), the court does not find that the panel exceeded their powers and will not vacate the award. However, pursuant to AS 09.43.130(a)(1), the court does find that the award should be modified due to an evident miscalculation on the part of the arbitrators, The panel's decision acknowledges that the Appellant had paid $11,329,81 to the Appellee for his services. The panel also acknowledges that the Appellee had charged the Appellant $13,389.00 for his services. The difference between these two amounts equal $2,059,19. The panel further credited the Appellant $370.00 for the Appellee's travel expenses. Therefore, the correct amount that should be awarded is $1,689.19. However, the court finds that this miscalculation in the panel's award was due to clerical error, and is not evidence of corruption or bias among the arbitrators.

DATED in Kenai, Alaska, this 15th day of June, 2007.

"s/"
HAROLD M. BROWN
Superior Court Judge

APPENDIX U

March 29, 2004: In the District/Superior Court for the State of Alaska at McGrath. Affidavit for Search Warrant No. **4MC-04-001SW**.

Being duly sworn, I state that I have reason to believe that:

(X) on the person of David S. Haeg or Tony R. Zellers

(X) on the premises known as: Trophy Lake Lodge or 4011M at SE of McGrath, Alaska,

there is now being concealed property, namely:

Within the remote camp known as "Trophy Lake Lodge" located near Underhill Creek near the Upper Swift River in GMU-19C and on and within Aircraft N4011M, a Piper PA-12 Supercruiser, all .223 caliber rifles and shotguns and ammunition used or on hand as well as spent shell casings or shotgun hulls, any wolf carcasses, wolf hides or wolf parts, oil blood or hair samples located within or on N4011M, any video or still camera film or photos.

Which (see AS 12.35.020)

(X) 1. is evidence of the particular crime(s) of Take Game From Aircraft 5AAC92.085(8).
2. tends to show that Haeg and Zellers committed the particular crime(s) of Take Game from Aircraft 5AAC 92.085 (8).

And the facts tending to establish the foregoing grounds for issuance of a search warrant are as follows: SEE ATTACHED AFFIDAVIT.

March 31, 2004: In the District/Superior Court for the State of Alaska at McGrath. Affidavit for Search Warrant No. **4MC-04-002SW**.

To: Any Peace Officer

(X) Sworn testimony having been given by Trp. Alaska State Troopers.

(X) An affidavit having been sworn to before me by Trp. Trooper Brett Gibbens – Alaska State Troopers

I find probable cause to believe that

(X) on the premises known as: 32283 Lakefront Drive to include Residence Hanger, Outbuildings, and Curtilage at Soldotna Alaska.

There is now being concealed property, namely: All .223 caliber rifles and 12 gauge shotguns and ammunition, as well as spent shell casings or shotgun hulls, also any navigational maps, equipment, and information contained within, any wolf carcasses, wolf hides or wolf parts, blood or hair samples which may be from a wolf, any video or still camera film, negatives, or photos which may show winter wolf hunting or trapping, as well as any digital still or video cameras and data contained within, any "bunny boots", and any wolf snares, any written records containing information pertaining to flight locations, dates, and passenger information from March 1st through present. Any record pertaining to the hunting or trapping of wolves. All taxidermy paperwork and transfer of possession papers for wolves from March 1st through present. Landing gear, ski's, tail wheels. Also satellite telephone.

(seal) 3/31/04 "s/"
Date Magistrate Margaret L. Murphy

March 31, 2004: In the District/Superior Court for the State of Alaska at McGrath. Affidavit for Search Warrant No. **4MC-04-003SW**.

To: Any Peace Officer

(X) Sworn testimony having been given by Trp. Alaska State Troopers.

(X) An affidavit having been sworn to before me by Trp. Trooper Brett Gibbens – Alaska State Troopers

I find probable cause to believe that

(X) on the premises known as: the State of Alaska, at Alaska, specifically search and seize the N4011M, Piper PA-12 Supercruiser aircraft wherever it may be located within the State of Alaska.

There is now being concealed property, namely: Airplane N4011 M, a Piper PA-12 Super Cruiser, as well as all .223 caliber rifles and 12 gauge shotgun and ammunition, as well as spent shell casings or shotgun hulls, also any navigational maps, equipment, and information contained within, crank case oil sample, and spare quarts of oil in use, any wolf carcasses, wolf hides or wolf parts, blood or hair samples which may be from a wolf, any video or still camera film, negatives, or photos which may show winter wolf hunting or trapping, as well as any digital still or video cameras and data contained within, any "bunny boots", and any wolf snares, any written records containing information pertaining to flight locations, dates, and passenger information from March 1st through present, any record pertaining to the hunting or trapping of wolves. All taxidermy paperwork and transfer of possession

papers for wolves from March 1st through present, landing gear, ski's, tail wheels, also satellite telephone.

(seal)

3/31/04 "s/"
Date Magistrate Margaret L. Murphy

April 2, 2004: In the District/Superior Court for the State of Alaska at McGrath. Affidavit for Search Warrant No. **4MC-04-004SW**.

No search warrant was ever provided – even though asked for many times.

Receipt and Inventory of Property Seized

- See attached 12-210(s). Nine wolf hides.

I received the attached search warrant on 4/2, 2004, and have executed it as follows:

On 4/20, 2004 at 1:50 pm searched the premises described in the warrant, and I left a copy of the warrant with Kevin Hackan, Manager of Alpha Fur Dressers.

The above inventory of property taken pursuant to the warrant was made in the presence of Inv. Chris Thompson.

I swear that this inventory is a true and detailed account of all property taken by me on the authority of this warrant.

"s/"
Burke Waldron

Signed and sworn before me on 4/8, 2004.

(Seal)

"s/"
Nancy R.West

April 2, 2004: In the District/Superior Court for the State of Alaska at McGrath. Affidavit for Search Warrant No. **3KN-04-81SW**.

To: Any Peace Officer –

(X) An affidavit having been sworn to ~~before me~~ by Trooper Todd Mountain.

I find probably cause to believe that

(X) on the premises known as: Skull and Bones by Kenny Jones, Taxidermy, 48640 Jones Road, at Soldotna, Alaska, Alaska.

There is now being concealed property, namely:

A bag containing approximately 8-11 wolf skulls from David S. Haeg.

(seal)

4/2/2004	"s/"
Date	David S. Landry, Judge

AFFIDAVIT FOR SEARCH WARRANT'S

1. Your affiant is an Alaska State Trooper with over six years of experience including five in the Yukon and Kuskokwim area. I am currently assigned to the State's Bureau of Wildlife Enforcement in McGrath. My main duties include enforcement of fish and wildlife related crimes. In addition to my law enforcement experience I am a lifelong Alaska resident and have actively trapped for over 20 years.

2. For many years it has been illegal to shoot wolves from an airplane. As part of an experimental predator control program in a small area around McGrath, it was made legal to aerial hunt wolves by a select number of permitted hunters as long as they remained within the permit hunt boundaries and adhered to strict reporting requirements and permit conditions. The only legal methods of take for wolves outside of the two permitted areas in the State are either ground shooting after three A.M. after the day a person has flown, or trapping and snaring. On 3-5-04, the Alaska Department of Fish and Game issued permit #12 to David S. Haeg and Tony R. Zellers allowing them to take wolves with the aide of an airplane (same day airborne) within the portion of Game Management Unit 19D East outlined by map and written description.

3. On Haeg's and Zellers' application form they stated that they would be operating from Trophy Lake Lodge, a fully equipped, well insulated hunting lodge located just southeast of McGrath and capable of supporting winter flight and hunting operations, built, owned and operated by David Haeg. If not based at the lodge, they planned on basing out of McGrath (which did not end up being the case). In addition they stated that they would be using a bush modified, high performance,

PA-12 Supercruiser on Aero 3000 skis. David Haeg identified himself as a Master Guide on his application for the aerial wolf hunting permit with the Alaska Department of Fish and Game. (See attached application).

4. On 3-21-04 your affiant contacted Haeg and Zellers in McGrath and viewed their aircraft, N4011M, I specifically noted the style of skis and oversized tail wheel without a tail ski, which is a rather unusual set up in this area. Out of all the aircraft permitted to legally hunt wolves in the McGrath area, this was the only one set up with these skis in conjunction with this type of rather unique tail wheel. During our conversation Haeg commented on the performance of his skis, and the one-inch wide center skeg. Zellers specifically commented on the type of experimental shotshells they would be using to shoot wolves with. This included new copper plated pellets and Remington "hevi shot". As Zellers was describing the new shot, he pointed into the airplane and I observed a camouflaged colored shotgun near the rear seat. Zellers went on to describe how with the short shot gun and the type of doors on this airplane, he was able to shoot out both sides of the airplane without the airplane making a full circle turn. N4011M is registered to Bush Pilot, Inc., P.O. Box 123, Soldotna, Alaska 99669. This is the mailing address listed for David Haeg on his wolf permit application with the Alaska Department of Fish and Game.

5. On 3-26-04, while patrolling in my state PA-18 supercub in the upper swift river drainage located with GMU-19C I located a place where an aircraft had landed next to several sets of wolf tracks. From my experience as a long time hunter trapper I recognized this as common practice when looking to see the direction of travel of the wolves. This location was approximately 50 plus miles outside of the permitted aerial wolf hunting zone.

6. On 3-27-04, I returned to this location and eventually located where four wolves had been killed in separate locations just up river from the initial point. Aerial inspection of the sites showed that in every instance running wolf tracks ended in a kill site, with no wolf tracks leaving the kill site. Ground inspection of one of the kill sites confirmed my earlier observations. From my experience I recognized this as being consistent with wolves being taken from arid airplane. At all four locations airplane backs consistent with David Haeg's airplane were observed and the wolf carcasses had been removed.

7. Trophy Lake Lodge is located in Game Management Unit 19C, and is a large guide camp which Haeg owns and uses for both commercial and private use throughout the year. The lodge is located on the upper Swift River, 27 miles upstream of the kill sites, and 63 miles southeast of the nearest boundary of the legally permitted aerial wolf hunting area.

8. On 3-28-04. I returned to the kill sites and did a thorough ground investigation. At kill sites # 1, #3 and #4 I was able to locate shotgun pellets in the snow next to the point where the wolf tracks ended in a bloody kill site. Investigations at kill site #3 showed a vertical trajectory of the pellets, consistent with the shot being fired from an airplane. At kill sites #3 and #4 I found copper plated buck shot pellets consistent with my conversation with Zellers on the 3-21-04 in which we talked about what ammunition he would be using. At kill site #2 I found a fresh .223 caliber brass near the kill site stamped with "223 REM WOLF". There were no human tracks, snowshoes, snowmachine, or airplane ski tracks within 20 yards of the cartridge brass, consistent with it being fired from an airplane. Ground inspection also showed ski tracks next to each kill site consistent with the ski on your defendant's airplane and at kill site #2 I located oil drippings from a parked airplane.

9. On 3/29/04, search warrant 4MC-04-001SW was issued by the Aniak District Court for Trophy Lake Lodge, and Aircraft N4011M. During the search warrant execution later that same day, the lodge was searched during which distinctive ammunition (".223 REM WOLF"), wolf carcasses, and hair and blood samples were seized. The carcasses had no obvious trap or snare marks, and appeared to have been shot. It was learned that Aircraft N4011M was in Soldotna (McGrath ADF&G spoke to Haeg at his home) at the time, and the search warrant return was submitted to the Aniak Court on 3/30/04.

10. During my time as a pilot in remote Alaska, it has been my experience that most pilots use a global position system (GPS) in conjunction with maps of the area when conducting bush flight operations. It is very common to save landing sites, lodge locations, and kill sites in the GPS, or to mark the locations on a map. Many of the hunters participating in hunts with specified boundaries, mark the boundaries on either the map or the GPS. Haeg provided GPS coordinates for the kill sites of the three wolves that he reportedly killed inside the legal permit hunt area. I flew to the coordinate which Haeg provided to ADF&G, and was unable to locate ski tracks or kill sites.

11. During the investigation it was brought to my attention by another Trooper that on the web site found on the internet at www.davehaeg.com David Haeg offers winter wolf hunting and trapping trips for $4,000.00. He goes on to state that in his advertisement that he will guarantee that every hunter takes home a wolf or wolverine hide. On the web site there are photographs of what appear to be shot wolves in front of N4011M. Also in the photo is a man holding a Ruger mini-14 rifle, which is capable of firing .223 caliber cartridges. There are

numerous other photographs on the site showing shot and snared wolves.

12. Less than one quarter mile from kill site #1, there is the carcass of a dead moose which the wolves have been feeding on. The moose carcass has snares set around it, as determined by two snared animals I observed near the carcass. The airplane tracks where the trapper landed and walked in to set the snares next to the moose carcass are the same type and vintage of those at the shot gun and rifle killed wolf sites. During the investigation there were no catch circles or drag marks typically found at sites where wolves have been trapped or snared. All four of the wolves were free roaming and left normal running wolf tracks up until the point they were shot.

13. At both the consolidation (a location between the kill sites where this same aircraft landed and took off several times) site and kill site #3, shoe tracks which appeared to be made from "bunny boots" were observed.

14. On 3/29/04, I executed a search warrant at the lodge, but the airplane was in Soldotna at the time. Soldotna Troopers have visually confirmed that the airplane is at the Haeg residence currently. The residence address listed by David Haeg on his wolf hunting permit is 32283 Lakefront Drive in Soldotna. On 3/30/04, Tony Zellers telephoned the McGrath ADF&G office and requested that a copy of the revised wolf permit conditions be faxed to David Haeg's residence. The reported kill date of the wolves by Haeg and Zellers was 3/6/04, and the wolf hides would need to be either fleshed, stretched, and dried, or stored in a refrigerator or freezer to prevent spoilage.

15. Landing gear, ski's, and tail wheels can be rapidly removed from an aircraft.

Trooper B. Gibbens — "s/"
Title — Signature

Subscribed and sworn to or affirmed [telephonically] before me on March 31, 2004, at Aniak, Alaska.
(Seal)

"s/"
Magistrate Margaret Murphy

APPENDIX V

November 4, 2004: In the District/Superior Court for the State of Alaska Fourth Judicial District at McGrath. Case No. 4MC-S04-Cr.

STATE OF ALASKA, Plaintiff
vs.
David Haeg, Defendant

STATE OF ALASKA, Plaintiff
vs.
Tony Zellers, Defendant

INFORMATION

Count I - AS 8 .54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellers

Count II - AS 8.54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellers

Count III - AS 8.54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellers

Count IV - AS 8.54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellers

Count V - AS 8.54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellers

Count VI - 5 AAC 92.140(a)

Unlawful Possession of Game
David Haeg and Tony Zellers

Count VII - 5 AAC 92.140(a)
Unlawful Possession of Game
David Haeg and Tony Zellers

Count VIII -AS 11.56.210(a)(2)
Unsworn Falsification
David Haeg

Count IX -AS 11.56.210(a)(2)
Unsworn Falsification
Tony Zellers

Count X - 5 AAC 84.270(14)
Trap Closed Season
David Haeg

Count XI - 5 AAC 84.270(13)
Trap Closed Season
David Haeg

Count XII - 5 AAC 92.220(a)(1)
Failure to Salvage Game
David Haeg

THE STATE OF ALASKA CHARGES:

Count I

That on or about March 5, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellers, "a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count II

That on or about March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellers, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count III

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellers, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count IV

That on or about March 22, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellers. a licensed assistant guide, did knowingly commit a

violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(&)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count V

That on or about March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellers, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count VI

That on or about March 5, 2004 through March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellers knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VII

That on or about March 21, 2004 through March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellers knowingly

possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VIII

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count IX

That on or about March 26, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, Tony Zellers, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count X

That on or about April 1, 2004 through April 2, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolverines with leg hold traps when trapping season for wolverines was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(14) and against the peace and dignity of the State of Alaska.

Count XI

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolves with snares when trapping season for wolves was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(13) and against the peace and dignity of the State of Alaska.

Count XII

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently fail to salvage the hide of a wolf taken in a snare he had set.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.220(a)(1) and against the peace and dignity of the State of Alaska.

This information is based upon the investigation of Alaska State Trooper Brett Gibbens as compiled in report #0423593 which indicates the following:

On 3/6/04, Gibbens observed an airplane named "Bat Cub" following a Fresh wolf track just outside of the legally permitted hunt on the Windy Fork of The Big River.

On 3/9/04, Gibbens was informed by Toby Boudreau of the Alaska Department of Fish and Game that David Haeg had reported that he had killed three wolves on the Big River on 3/5/04. Gibbens was given the GPS coordinates which had been reported by Haeg.

On 3/11/04, Gibbens flew to the coordinates given, and found wolf tracks, but no kill site locations in the snow covered ground.

On 3/21/04, Gibbens met David Haeg and Tony Zellers while they were in McGrath to seal the three wolves that they had reportedly taken on the fifth of March. During this contact Gibbens noticed that the "Bat Cub" that Haeg was flying was equipped with Aero 300 ski's with a center skeg, and an over sized tail wheel with no ski.

On 3/26/04, while or patrol of the upper Swift River, Gibbens observed a set of airplane ski tracks next to some wolf tracks that seemed consistent with a wolf hunter checking the direction of travel of a pack of wolves. Gibbens was out of fuel and day light, so he returned to McGrath for the night.

On 3/27/04, Gibbens returned to the upper Swift River and followed the same wolf tracks, which he believed the other airplane had followed. He soon came to a spot where the wolf pack appeared to have killed an adult moose. Gibbens could see from the air that an airplane had landed at this spot, and that someone appeared to have set traps and or snares at the spot. This was apparent to Gibbens because there were human foot tracks in the snow

and there was a live wolverine in a snare near the moose kill.

As Gibbens flew upstream from the location of the moose kill, he immediately located a set of running wolf tracks in the snow which ended in a bloody spot with airplane ski tracks at the same location. This evidence was (consistent with a site where a wolf had been shot-gunned from the air. Gibbens I followed the remaining wolf tracks upstream and soon found three more similar sites in the snow as well as an additional site where a ski plane had landed and taken off multiple times.

Gibbens landed and snowshoed in to one of the sites and found evidence confirming what he had seen from the air. Running wolf tracks ended abruptly with blood and wolf hair in the track, and, there were airplane ski tracks and human foot tracks where someone had loaded the wolf into the airplane and taken off again. Blood and hair samples were collected, and Gibbens returned to McGrath for better equipment and some help.

On 3/28/04, Gibbens returned to the area, where he met up with Trooper Dobson who had flown in from Bethel, and Trooper Roe who had flown in from Fairbanks in a State Trooper helicopter. During the day, the troopers confirmed that the four kill sites, which Gibbens had observed the day before, were sites where wolves were killed from the air with guns. Shot gun pellets were recovered from three of the sites, and "WOLF" brand .223 brass was found at the remaining site. (Later this .223 brass was conclusively matched at the Department of Public Safety Crime Lab as being fired from the Ruger mini-14 seized from the Haeg residence.) Shot shell wadding was found at two of the sites. The shotgun pellets recovered were size 00 and #4 buckshot. All four wolves appeared to have been hauled away whole, as there were no carcasses located at the sites. The airplane tracks at all of

the landing sites had large ski's with center skegs, and an over sized tail wheel. These tracks appeared consistent with the ski's and tail wheel, which Gibbens had observed on David Haeg's airplane when he was in McGrath. There were no catch circles (where trapped or snared animals tear up the ground) or other indications that any of these wolves had been trapped.

On 3/29/04, Gibbens obtained a search warrant for Trophy Lake Lodge, which is owned and operated by David Haeg. During the execution of the search warrant, troopers located several Ruger mini-I4 magazines loaded with "WOLF" brand .223 ammunition. Also located were several wolf carcasses and parts of wolf carcasses, a buck shot pellet, and blood and hair in many locations outside the lodge. Haeg was not present at the time of the search. Gibbens saw airplane tracks in the snow on the lake, which appeared consistent with tracks seen at the wolf kill sites.

On 4/1/04, David Haeg's home and garage were searched pursuant to search warrant 4MC-04-002SW. During this search, many items were discovered, some of which were a Binneli twelve gauge shotgun, a large number of buck shot shells for the twelve gauge, a Ruger mini-I4 rifle, and cartridge magazines for the mini-14 loaded with "WOLF" brand .223 ammunition. Blood and hair samples were also taken near the garage, and a spent "WOLF" brand ,223 casing was found in the snow between the "Bat Cub" and the garage. David Haeg had a receipt in his possession for eleven wolf skulls which he had dropped off at a local taxidermy shop.

Also on 4/1/04, the "Bat Cub", N4011M was searched and seized pursuant to search warrant 4MC-04-003SW. During the initial search of the airplane, blood and hair were found inside the airplane, and the skis and over sized

tail wheel appeared consistent with the tracks from the kill sites.

On 4/2/04, Troopers Dobson and Gibbens returned to the area of the moose kill site near the location where the wolves had been shot-gunned on the Swift River. As Gibbens flew over the site in his State issued Super Cub, he saw that there were now two wolverines and one wolf caught in snares at the site near the moose. The season for wolverines had closed on March 31st, and the season for all leg hold trapping had closed that same day. Wolf snaring season remained open through April 30th. Upon landing and walking into the site, Gibbens saw that there were in excess of three dozen snares set on wolf trails near the dead moose, and also some MB-750 leg hold traps. Six of these traps were still set and operational, and were seized as evidence.

The two wolverines were caught in snares, and were seized as evidence. The wolf was left in the snare as it was still a legal animal. The remaining set snares were left alone since they were still legal at this point. The airplane tracks at this site appeared consistent with the tracks at the wolf kill sites and Trophy Lake lodge.

The troopers next went back to Trophy Lake to see if the wolverine traps near the lodge had been pulled, and to see if anyone had removed a wolverine that Gibbens saw there in a trap several days prior. At the lake troopers found that someone had removed the wolverine and snapped shut the traps near the lodge. While checking these trap sites, we found two and a half more wolf carcasses which were seized as evidence. The carcasses were being used for wolverine bait, and appeared to have pellet trauma in the rear ends.

On 4/2/04, Sgt. Waldron and Inv. Thompson executed search warrant 4MC-04-004SW, during which nine wolf hides were seized from Alpha Fur Dressers in Anchorage. The wolf hides had been dropped off by Tony Zellers, in the name of Dave Haeg.

On 4/3/04, Trooper Mountain seized a bag containing eleven wolf skulls from Kenny Jones taxidermy shop pursuant to search warrant 4KN-04-81SW. The skulls had been dropped off by David Haeg.

Also on 4/3/04, Troopers Dobson and Gibbens conducted necropsies in McGrath on the six wolf carcasses, which had been seized near Trophy Lake Lodge. During the necropsies, the troopers located 00 and #4 buck shot pellets in five of the six carcasses, and found an empty shot gun casing in the stomach of one of the wolves. This empty shotgun casing was later matched at the Department of Public safety Crime Lab as being extracted from the Binelli shot gun seized from the Haeg residence.

On 5/2/04, while on patrol in his State issued Super Cub on the Swift River, Gibbens went to the location of the moose kill trap site to see if the snares had been pulled. Upon arriving at the scene, Gibbens saw a wolf caught in a snare, which appeared to be freshly caught. He also observed several other torn up areas consistent with animals being caught in traps or snares. There was no longer any snow on the ground, and there was no suitable landing site.

On 5/4/04, Gibbens returned to the site with Trooper Roe in a helicopter. On the ground at the scene, Gibbens found the wolf caught in the snare, which was still salvageable, but was beginning to decompose. Gibbens skinned the wolf and collected it as evidence since the wolf snaring season had closed on April 30th. Also at the site,

Gibbens located catch circles where three different moose had been caught, one of which broke the snare and freed itself, and two which appeared to have been caught for a prolonged period of time and eventually tore down the trees holding the snares, and had escaped the area dragging the snare and part of a tree still attached to them. There was also another wolf caught in a snare, which had been consumed by other wolves except for the head and neck. Gibbens could also see where someone had removed a wolverine and a coupe of other wolves, which had been caught at the site after he was there on April 2nd. Gibbens was able to locate nineteen snares still actively set at the site with the loops still open.

Upon checking wolf sealing records for David Haeg and Tony Zellers, Gibbens was able to locate two sealing certificates. On sealing certificate #E009883, there are three gray wolves sealed which were reportedly harvested near lone mountain on the Big River within the legally permitted aerial wolf hunting area. The wolves were sealed in McGrath on 3121104, with the certificate signed by David S. Haeg. The investigation shows that these wolves were not taken at the location reported by Haeg.

On sealing certificate #E039753 there are six gray wolves sealed in Anchorage on 3/26/04 which were reportedly killed in Game Management Unit 16B on the Chuitna and Chakachatna Rivers by Tony Zellers. The wolves were reportedly taken by ground shooting with a snow machine. The certificate is signed by Tony R. Zellers. The investigation shows that these wolves were not taken by Zellers at the reported location nor by ground shooting from a snowmachine.

David S. Haeg was interviewed in Anchorage on 6/11/04, and Tony R. Zellers was interviewed in Anchorage on 6/23/04. During the interviews, the timelines and events

given were almost exactly identical, and a summary of the statements of the two men follows:

The two men applied for and were issued a permit to hunt wolves with the use of an airplane in a specific area near McGrath. Zellers bought a new Binelli twelve gauge shotgun, and a large amount of several kinds of buckshot ammunition.

On 3/5/04, the two men flew in N4011M (Bat Cub) to McGrath where they were issued permits at the Fish and game office, during which they were given maps and written descriptions of the legal hunting area. After leaving McGrath, the two flew upstream along the Big River. Several wolves were located about one or two miles outside the hunt area, and they shot one gray wolf, with Zellers doing the, shooting with the shotgun from the air while Haeg was flying the plane. The wolf was hauled back to trophy Lake Lodge whole and was skinned that night.

On 3/6/04, they flew to the Big River where they had shot the wolf the day before. They could not locate the remaining wolves, so they proceeded upstream on the Big River (further outside the legal area). Twenty-four miles upstream from the hunt area boundary on the Big River, they spotted two gray wolves on a ridge near a moose kill. Both wolves were shot from the air with a shotgun by Zellers with Haeg again flying the plane. One of the wolves then had to be shot from the ground with the .223 by Zellers. The two wolves were hauled back to the lodge, and were skinned that night.

On 3/6/04, Haeg called on his satellite phone and reported to McGrath Fish and Game that he and Zellers had harvested three wolves within the permitted hunt area on the Big river, at which time he gave false coordinates for the kill sites.

After calling in the report, Haeg and Zellers returned to Soldotna, taking the three-wolf hides with them. On 3/15/04, they received a call from Fish and Game in McGrath telling them that the three hides had to be sealed in McGrath.

On 3/20/04, Haeg and Zellers flew from Soldotna to Trophy Lake Lodge, where they spent the night. They had brought the three wolf hides back with them to take to McGrath for sealing.

On the morning of 3/21/04, Haeg and Zellers decided to fly South (further from the legal area) to the upper Stony River to look for wolves and check out local moose populations. Several wolves were spotted on the Stony River, and a gray male was shot from the air with the shotgun. Zellers did the shooting from the air while Haeg flew. One of the wolves was wounded and Zellers shot the wounded wolf again from the ground with the .223. Multiple shots were taken at the other wolves, but none were killed. The dead wolf was taken back to the lodge where it was dropped off whole.

During their interviews, Haeg and Zellers pointed out the location of the kill on a map. The location described as the kill location for this wolf was more than eighty miles from the nearest border of the legal hunt area.

Haeg and Zellers then flew to McGrath with the three wolf hides from earlier in the month. Upon arrival in McGrath, the two men met with Biologist Toby Boudreau, to have the wolves sealed. Haeg provided the information for the sealing of the wolves, knowing that it was false at the time he signed the form. He had claimed that the wolves had been shot inside the permit area because he

wanted to be known as a successful participant in the aerial wolf hunt.

On 3/22/04, Haeg and Zellers flew along the Swift River to check on moose numbers in the local area. They still had the shotgun and rifle in the plane. They found a dead moose, which had been recently killed by wolves. They spotted two different wolves near the moose kill. The second wolf they saw was a large gray male, and was shot from the air by Zellers with the shotgun while Haeg was flying the plane. The wolf was hauled back to the lodge, and the two men gathered traps and snares from the lodge, and two other sites in the field where traps and snares were being stored. They returned to the moose kill site and set in excess of forty wolf snares, and some traps. Each man set about half of the snares, and Haeg set the leg hold traps. There were no diagrams made of where the snares and traps were set, and neither man wrote down exactly how many snares had been set.

On 3/23/04, Haeg and Zellers decided to fly back to the Swift River to see if any wolves had been caught in the traps or snares. After finding no animals at the set, the two men began to fly upstream along the Swift River when they spotted, shot and killed four wolves running on the river. They also located more wolves scattered in the trees. Four gray wolves were shot from the air, with Zellers doing all of the shooting, while Haeg flew the plane. Multiple shots were taken at other wolves in the pack, without success. All wolves were hauled from the field whole and skinned at the lodge later that day.

The area where all five of the wolves were killed on the Swift River is fifty miles from the nearest boundary of the legal hunt area, and separated by major terrain features.

On 3/24/04, Haeg and Zellers flew to Soldotna with all nine wolf hides. They had a discussion about having Zellers get the six new wolves sealed in his name, and giving a false location so that they would not draw extra attention to the Swift River area. Zellers took all nine wolf hides to Anchorage, where on 3/26/04, he had the six new wolves sealed at the Fish and Game office. Zellers knew that the information he provided during sealing was false at the time he signed the signed the certificate. After getting the wolf hides sealed, he took all nine to Alpha Fur Dressers to have them tanned.

During their interviews, both Haeg and Zellers admitted that they knew that the wolves they shot from the airplane were outside the permit area when they were shot.

Both Haeg and Zellers stated that they did not know that the leg hold traps had to be pulled before March 31st, and that they never went back to the trap and snare set. Haeg stated that Tony Lee had pulled some of the animals from the set during April, and he thought that Lee was going to pull all of the traps and snares. When Gibbens asked Haeg if he thought that the snares which were left out were his responsibility, he said that he did not think so, since he thought that Tony Lee was going to take care of them. Gibbens asked him if he told Tony Lee exactly how many snares were at the site, and he said that he did not know.

DATED this 4th day of November, 2004 at Anchorage, Alaska.

GREGG D. RENKES
ATTORNEY GENERAL
by: "s/"
Scot H. Leaders
Assistant Attorney General Alaska Bar No. 971 1067

APPENDIX W

November 8, 2004:

Dave Haeg's Wolf Statement

Your Honor – members of the court I appreciate your being here and apologize in advance for taking up so much of your time.

The issues we are here to resolve are of an importance to me eclipsed only by that of my wife and daughters. I sincerely hope you listen very carefully and take notes from which to question myself, my wife, my friends, and anyone else involved.

First, I would like to make is absolutely clear that I realize I made a horrendous mistake that will probably haunt me and my family for the rest of my life. I have regretted my actions every minute of every day of every month since. If you doubt this I suggest talking to my wife and kids.

I have not slept a whole night in 6 months, have been diagnosed with severe depression and feel I am a total outcast, staying in my home unless forced to do otherwise. I cannot express just how sorry I am and feel I have let the State and the people who depend on its resources down by jeopardizing a desperately needed program to reduce predation, before there is absolutely nothing left.

Although I am guilty of most of the charges I face I did experience circumstances which could have clouded anyone's judgment and caused them to act the same way.

I grew up with just my parents in a very remote area of Alaska where there are no roads and the nearest family

lived 35 miles away. All my schooling was by correspondence from which I graduated with honors at our lodge in 1984. I learned very early on the irreplaceable value of our fish and wildlife resources – as a vital source of our winter food, as watchable wildlife for our lodge guests, and as an income from our fishing and trapping.

My love and skill with wildlife led me to become an assistant big game guide in 1984 at the age of 18, under Master Guide John Swiss. I passed the registered guide test in 1992 and became a Master Guide just recently at the age of 38. I purchased Eberhard Brunner's guide operation in 1997 after working for him for many years. After purchasing Mr. Brunner's business my wife Jackie and I devoted all of our time and money to it – building a beautiful lodge, putting in electricity and indoor plumbing, rebuilding almost all of the out buildings, and establishing the way of life we loved and hoped to pass on to our children.

During the same time we were getting into the guiding business wolf numbers started to increase dramatically. At first I thought all the old time guides were blowing the wolf problem way out of proportion and I was actually thrilled to see more wolves. By the winter of 1992 even I had the feeling they may be right – when I followed one pack of 46 wolves that averaged 2 moose kills per day. Moose and resident caribou numbers started to drop and after several years I started to see more bull moose kill sites than I saw live bull moose. The wolf predation levels at this time were horrific.

One of my strongest beliefs is that to be an Alaskan Guide you must be first and foremost a good steward of the resource, willing to adjust hunting pressure to game numbers, willing to conduct yearly surveys, willing to pass that information on to the area biologists, Board of Game,

Legislature, Governor, media, etc. And be willing to aid ADF&G in their efforts to maintain healthy wildlife numbers through the State Constitutions sustained yield principle – essentially to be willing to leave the resource to future generations in as good or better shape than at present.

To this end we started decreasing moose and caribou hunts while trying to increase pressure on wolves. In 2003 we took less than 1/3 of our former moose hunts with caribou hunts essentially eliminated.

I also began attending and testifying at all Board of Game meetings dealing with my area along with submitting proposals, writing compass pieces to the Anchorage Daily News, calls and letters to Native communities, the Governor and all legislators, and talking extensively with every wolf biologist in the State of Alaska. I organized Alaska Western Wildlife Alliance, an association of mostly guides to better address the problem, traveled to Juneau to educate legislators, and have been a guest on live radio programs discussing wolf predation. I also attended and became a member of the Kenai F&G Advisory Committee.

As conditions grew worse with not much being done I learned how to trap and snare wolves and devoted as much time as I could to this effort. This seemed to have promise when I was able to catch over a dozen wolves in one winter. Yet success at this started to drop as each wolf pack learned to avoid my traps and snares.

When ADF&G solicited applications, last fall, for people and planes to conduct aerial wolf control in Unit 19D I felt as if those of us who had been fighting so hard for so long were finally getting somewhere. I later applied for a permit but didn't get a response for several months. In

February ADF&G called me in Pennsylvania to see if I was still willing to participate. ADF&G told me the 4 teams who had hunted all winter had taken less than ¼ of the wolves specified and that there was a concern the program might be terminated if more wolves were not killed. I told ADF&G that I would be more than happy to help when I got back to Alaska and after I testified at the Board of Game meeting in Fairbanks. When these were done I purchased a very expensive shotgun and ammo, which had been recommended, and we set out to McGrath, determined to kill wolves so the program would not be a failure and terminated.

On our way to McGrath from Soldotna we found virtually no moose, no caribou, no wolves, and hardly any tracks. As we were landing in McGrath there were more moose along the river beside the runway than we had seen during the entire trip. It was truly stunning to us that the wolf predation problem was so bad that the only moose left had gathered within a ½ mile of town for protection from the wolves. It should have dawned on us at this time why the first 4 aerial wolf control teams had been unable to take even ¼ of the 40 wolves specified in the previous 4 months. I now realize that there were not enough moose and caribou left in the control area to support the number of wolves ADF&G wanted to take. It probably would not have mattered how many aerial wolf teams were permitted by ADF&G – just about all of the wolves that used to live in the control area had to move to other areas that still had game. What ADF&G did by issuing more permits was just adding to the number of pilots frustrated by not being able to find wolves inside the area. After we left McGrath we couldn't find anything again for hours. We finally did find a fresh moose kill close to the Southern boundary and started trailing the wolves. We caught up to them after a couple miles and didn't think about anything but trying to get them before they got off the river and into the trees.

We managed to get one wolf out of the 3 we had seen. From the tracks I would say 5 others went into the trees before we seen them. When we stopped to figure out where we were we realized we were likely outside the area by a little over 1 mile which is about 45 seconds flying time. They next day we continued trying to locate wolves inside the area with no success. We later found another moose kill further outside the area up Big River with 2 of the wolves out in the open. We went after those wolves and got them as they tried to get to the timber. At the time we thought we were doing the right thing, as the wolves we killed were undoubtedly the ones that had finished off the moose that once lived in the control area. I guess to us it was clear the wolves Fish and Game wanted killed were no longer in the control area and that if these wolves that were now outside the open area were not killed they would finish off the last of the moose surrounding the control area – which would be needed to repopulate the control area which was already devoid of moose.

The more we flew the more I realized we were and are at the very last hour in being able to do anything about reversing the plummeting and dangerously low moose and caribou numbers. Of the 5000 resident caribou that used to winter from Lime Village to Rainy Pass we spotted exactly 0. How many years will it be to bring this herd back? Say we get a very healthy 15% increase per year? 0 caribou x 15% = 0 caribou. Of the over 500 moose that used to winter on the Swift River up stream of Lime Village there are now 40 left. How many years will it take to bring this herd back? What if the 12 wolves that had killed one moose out of this 40 and were after another within 3 days had been left alone? Remember each wolf consumes an average of 1 moose a month. This means every 3rd day this pack will kill a moose, which is exactly what we observed. How long will the 40 moose last this pack? About 120 days or 4 months and it will likely be gone as wolves generally stay with a

good food source till it's gone. How long will it take to replace this herd if it is 0? How many years does biologist Toby Bodro think it will take for moose numbers to recover to a point to support the harvest hoped for or needed by Alaskans? Does he think control should have started sooner? These are the grim realities that face all of us who depend on the wildlife of this area.

In the 50 plus hours we flew in Unit 19 during the control program we saw a total of 8 wolf-killed moose, 27 wolves and 110 live moose. This is an absolutely unbelievable ratio of about 1 wolf to 4 moose. State biologists have determined a healthy ratio to be 1 wolf to 40 moose and when ratios get down to 1 to 20 the moose are in trouble. What kind of trouble are moose in when they are just about gone and there is 1 wolf to every 4 moose? 8 wolf killed moose and 110 live moose in 2 weeks flying indicates a mortality of at the very least of 7% per month or 84% per year. Calf survival in this area is under 7% per year. This means in 15 months there will be very few if any moose left. Is it time to hit the panic button?

During the time we were out looking for wolves we flew over 5000 air miles, which covered about 5000 square miles of the best moose habitat we could find. It is easy to see ½ mile out each side of the airplane while traveling giving 1-mile wide coverage. We did this, as good moose habitat is also good wolf habitat. Since we saw 110 moose in 5000 square miles we come to a density of .022 moose per square mile. I realize we did not cross section all these square miles to find every moose. But we did put 5000 air miles over just the best winter habitat – along rivers and just above tree line on the hills. Since we just covered the highest density areas I feel this figure to likely average out if the lower density areas were figured in.

A moose density of .022 per square mile is absolutely unheard of. Nothing has ever been recorded this low where moose occur. Several years ago before things really got bad even official surveys came up with the lowest moose densities ever recorded – in an area which 15 years ago had one of the highest and one in which the habitat continues to be extremely healthy.

Moose densities in these areas used to average well over 1 per square mile or over 45 times what we recorded last winter. If this is not a biological emergency I don't know what is.

The original area opened around McGrath was later expanded to include the area in which it was thought the wolves would range into. This was figured to be another 20 miles or so. Yet every pack, which kills all the game in its territory, will just keep traveling until it finds food. An example of this is a pack of 24 wolves I followed from Two Lakes on the Stony River through Merrill Pass and then down to the Drift River. This is over 100 miles on the ground and over 75 miles straight line. I quit following them as I was getting low on fuel so God only knows how far they went from Two Lakes that is devoid of any moose. I guess my point is that if you try to conduct wolf control where the game is already gone the wolves that ate everything will be gone also – hunger overpowers any desire to stay in their territorial range.

Probably because of this a current Board of Game member at the February meeting told me that if we ended up shooting wolves outside the open area to just report them taken inside the area. When talking about the control program Toby Bradro stated "what is being done and what should be done are two different things". He also said the BOG was planning on expanding the wolf control program to include all of Unit 19. Meaning there was a

problem everywhere – not just in the control area. A former State biologist said he couldn't believe people were not poisoning the wolves out there and went on to explain exactly the poison that works best and how to obtain it. I told him I thought poison was outlawed because it killed wolverine, fox, lynx, eagles, and ravens also. Several other Board of Game members along with high level ADF&G personnel and many others testifying at the February BOG meeting all had the same comment to me: It is much more important for a pilot as good as you to be out killing wolves then to be here testifying at this meeting. A Board of Game member also suggested I contact Lucky Egress in McGrath, who had one of the four original aerial control permits, to work with him to find wolves. I contacted Mr. Egress, before heading to McGrath, and he said his airplane engine was broken and that there were few if any wolves inside the open area. When you hear comments like this from our leading wildlife managers and experts you get the feeling of just how overwhelmingly important it is to reduce wolf numbers immediately.

Several ADF&G people at the BOG meeting again made the comment that there was a big concern that since so few wolves had been taken in the previous 4 months the program would be seen as a failure and terminated.

I don't know if I was exactly brainwashed at this point but I was feeling immense pressure from all sides to kill wolves. Conditions to find and track them would disappear as the snow started to melt and my spring bear hunting season was also getting close – which added to the pressure to do something effective soon.

The State prosecution will probably portray me as a renegade outlaw guide with little or no respect for the State, its laws, or its wildlife. They will probably say I did this to make money by selling the wolves or by selling more

moose hunts. My response is if someone doesn't do something soon there will be no moose, no caribou and no wolves left to hunt. I have heard the troopers feel that I should never be allowed to guide again. Is this because I'm such a bad guide or that they feel enormous political pressure to punish me severely? I have been told that even the governor was contacted over my actions. Why should I and especially my family be signaled out for severe punishment when I was just trying to help? I even assisted the troopers in every way possible during their investigation. Does this action also call for the harshest punishment? I hope you realize just how much I love and respect this State and its wildlife and exactly how much pressure I was under when I broke the law. The only violations I have ever had in my whole life are two speeding tickets – even though my entire life has revolved exclusively around hunting, fishing, and trapping. Is this the past conduct and record of someone who is a renegade, does not respect the resource should not be shown any mercy and not given one chance to learn from his mistake?

The only license required for the issuance of the aerial control permit was a trapping license and in fact only my trapping license number was written on the permit. Firearms are a legal method of taking furbearers under a trapping license and wolves are classified as furbearers. At the same time we were taking wolves by shooting we were setting snares and traps. At no point during the wolf control program did we do any hunting or guiding whatsoever. Yet the State prosecutors maintain we were hunting and wish to suspend both my personal hunting and guiding privileges along with probation of 10 years of no jailable offenses and no fish or wildlife or guiding offenses. In other words if I snagged a red salmon in the Kenai River, which is done continuously by accident, I would lose my guide license and the only way I have to provide for my family? Doesn't this seem excessive? Why don't they add

in speeding & parking tickets? If the troopers and the governor feel I must pay dearly let me pay the price and not my family. Put me in jail – don't cripple the only way I have to provide for my family.

The Prosecution has said it is trying to keep emotion and feelings out of this to a big point because of what it is. What is it to the Prosecution? A very controversial and political issue very much in the publics' eye? How can I keep emotion and feeling out of this when my whole life is wrapped up in it? Am I not supposed to fight for my family just because the governor and prosecution would probably like it if I just dried up and blew away?

(Let Brent argue the penalties and technicalities?)

As far as what we did wrong trapping I was planning on flying out and pull the snares just as soon as everything settled down after getting our bear hunters out into the field. Before this happened my home was searched and my airplane seized. This was so devastating and stunning I didn't sleep at all for over a week and with spring hunters coming I was mentally a very big wreck. I relied on my wife and employees to make pretty much every decision from then on. That I had leg-hold traps out along with the snares at the wolf set was overlooked and I accept responsibility for these.

In early April a guide friend of mine, named Tony Lee, called and left a message that he had found a wolf set on the Swift and wanted to know if it was mine. On April 4th I returned his call and confirmed it was mine. He wanted to know if I needed help with it. I said yes and that I was in big trouble with the State along with trying to somehow get through my spring season. I said that the last thing I wanted to do was make the 300-mile round trip flight through the Alaska Range just to shut the set down.

I told him to set off all the traps and snares if he would. Tony Lee replied he would do that but since the set was still catching wolves he would really like to keep it going and that a bear-hunting client of his wanted a wolf or two out of it. I told him he could do whatever he wanted.

On April 11 I was so worried that the set may get me into more trouble that I called Tony Lee and told him I didn't want to worry about the set and to shut it down no matter what. Tony Lee said he would do that and that he would send me $1000.00 when he sold the wolves and wolverine he had gotten out of the set.

My wife at some point here also talked to Tony Lee about all this. As a result I don't know what to say about the trapping charges except I counted on Tony Lee to do as he said and that he wanted to take over maintenance of the set because it was still catching wolves.

To date I have yet to hear again from Tony Lee and he is avoiding my attorney. We have not received any money from the furs as he promised either. If you would like confirmation of any of this my wife can help you. We also have phone records showing when I called Tony Lee.

As I indicated before this has literally crushed my life and to a large extent the life of my family. For over a week I didn't sleep at all and after that only with medical help. Both my wife and I quit eating and each lost 20 lbs. before we could force ourselves to eat. During the first couple months I would get severe anxiety attacks that at night forced me to hide under my desk and during the day led to dry heaving, uncontrolled sweating and shaking. I developed severe back pain from remaining bent over virtually day and night and to this day have non-stop headaches. I rack my brain non-stop while I'm awake to

figure out where I went wrong. I still refuse to go outside unless forced.

I have made 4 half-hearted attempts at suicide – 3 while flying and once while helping Jake get a wounded bear out of his den.

My wife, Jackie, finally convinced me to not take my own life because she said she couldn't bear raising our daughters without me. I guess to the extent possible my stunned brain has realized that by trying to protect the future of my family and of those that also depend on moose and caribou I had just thrown my families future away.

I guess at times I feel like the State of Alaska has let all of us down. I poured my heart and soul into my life's dream only to watch the State do absolutely nothing for many years to stop it from being slowly wiped out. In a way it's like slow agonizing torture. I look at how carefully the State sheppard's and guards the businesses of loggers, fishermen, miners, tourism operators, oil companies and all others. I see how the state spends millions promoting tourism and subsidizing commercial fisherman when they have a weak salmon return. Yet my business was literally fed to the wolves and there will be no compensation for my family or me when our business collapses. It's kind of a cruel joke to me that the very first line of the State Constitution declares "This Constitution is dedicated to the principals that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry". I have been denied my right to enjoy the rewards of my industry.

I understand that I did something wrong and I understand I must be punished. I hope you understand that it was only after I received a permit for aerial shooting that I purchased the best shotgun and ammo money could

buy and spent hours modifying my best plane to help ADF&G. This does not excuse what I have done but it shows there was absolutely no intent to do so until started down this path by the State. I did not do this with the thought I was hunting or guiding or making money. I did it because of all the people out there; I understand probably best the staggering impact wolf predation has had in recent years. In the many, many hours I have flown this area in winter I have seen virtually no sign of anyone else doing anything to control wolf numbers. The expense to operate in these areas is enormous. During the 50 hours of flying we did during the aerial control program alone we burned close to 500 gallons of fuel that costs me in excess of $6.00 per gallon.

After this springs season, which by the way I truthfully did not expect to live through, we cancelled all of our fall hunts. I took everything extremely seriously and would not risk letting hunters depend on me when I did not know what was going to happen. The cancelled fall hunts would have provided ¾'s of our total years income to Jackie and I. Yet we still had to pay the State thousands in land leases and permits for our lodge and hunting camps even though we did not use them this past season. We had to cancel all my summer flightseeing trips because the plane I used for this was seized. Our legal bills are growing and we lost not only my income for this past season but also my wife's. Neither of us have any other income.

Again I cannot even begin to explain how much I regret what we did. I have a very hard time thinking of anything else. I look at life and how short it really is and how in an instant I threw a very large part of mine away. How can my wife and daughters forgive me? How can my friends? How can anyone else whose future I jeopardized by threatening the only program that can save the moose and caribou resource? How will I put my daughters

through college now that I may have to start over and learn a new trade?

If you can find it in your heart to give me a chance I promise to never, never let you or the State down again. Please let me have the chance for me to live out the rest of my dream of being able to provide for my family as an Alaskan Big Game Guide.

In Trooper Gibbens report he states that "based on his experience there is clear economic incentive for Haeg & Zellers to eliminate or reduce predators from this area, which could potentially increase numbers of trophy animals for them to harvest with clients".

Since Mr. Gibbens is allowed to give an opinion based on his experience in his report I would like him to give an opinion based on his experience with some other issues. I would like to have him and state biologist Toby Bodro answer these questions:

1. If they think there has been a huge drop in moose and/or caribou numbers in Unit 19 in the last 15 years?

2. If there has been a huge increase in wolves in the last 15 years in this same area?

3. If there are large areas almost devoid of moose and/or caribou such as around McGrath and the Upper Stony River that previously had abundant populations?

4. That if wolves are not reduced Unit wide all of Unit 19 will likely join the other areas which are now virtually devoid of moose and/or caribou?

5. If Mr. Gibbens and Mr. Bodro would agree that if moose and/or caribou numbers get much lower it likely will not be viable to operate or keep a hunting lodge and camps on leased State land in any of Unit 19? If Mr. Gibbens, who has seen the lodge my family and I built, can understand the effort and money required to build it and the pain and stress involved in likely having to burn it down?

6. If Mr. Gibbens and Mr. Bodro think the State has maintained its wildlife on the sustained yield principle – as required by the Alaska State Constitution?

7. If Mr. Gibbens agrees with the numbers of moose, wolves, and kills we compiled while flying in and around the wolf control area – 110 live moose, 27 wolves, and 8 dead moose?

8. If Mr. Gibbens feels if that I had not received a permit if I would have still purchased a shotgun and went out and shot wolves from the air?

9. If Mr. Gibbens and Mr. Bodro feel what I did was needed even if it was illegal?

I don't really know how to explain or express what I know to be true of wildlife numbers and trends in Unit 19. It is what I believe most would call a biological emergency. Moose numbers have bottomed out to very close to zero in the last couple years around McGrath and more recently in the Upper Stony River. The wolves responsible have moved to other areas with some moose left. Last winter was the last chance to keep moose numbers from hitting virtually zero around Lime Village in my opinion. In a very misguided way I felt I had to step in and keep this

biological emergency from happening. There was a very overwhelming compulsion to do something. After so many years of watching moose and caribou decline so fast that to stand by and watch the very last of them to be eaten wasn't possible for me. I think in most emergency situations it is natural to react without thinking things through. Now that I know the consequences it would be very possible for me to stand by – I just won't go out there in the winter when the battle that is being lost is so obvious.

We assisted in the investigation in everyway possible including rushing a map with kill locations to Mr. Leaders ASAP at his request.

As an observation the Board of Game must also want wolves reduced Unit wide because for years now they allow anyone, even aliens, hunting or trapping to take an unlimited number of wolves anywhere in Unit 19. This regulation sounds effective has done just about nothing to increase the wolf harvest.

I never contemplated the consequences of what we did until after the fact. We flew out with the best of intentions and got carried away before we ever stopped to think how it could affect our lives. Being that I've never been in trouble before has probably added to my naivety. I now have had 7 months of round the clock mind crushing fear to examine in minute detail every last consequence of my actions. The amount of fear I have gone through has changed my life forever. This new fear has eclipsed all the really big fears I had before including flying low over miles of open ocean on wheels, getting into instrument flight conditions in very bad weather while in the mountains, and prying a wounded brown bear out of his den. I now can do and have done all of these without the slightest hesitation.

In the end I guess I should not have cared or tried so hard to keep the resource from self-destructing. Yet how do you do that when the resource is almost as big a part of your life as your family? Just watch it run off the edge of a cliff? Or do you flight as hard as you possibly can as I have done? In a way I feel I was in the same exact situation when I was 15. My parents left me to watch our lodge for the very first time by myself. An 8-1/2' sow brown bear and her 2 very large cubs broke into our lodge at night and started eating our winter food supply. Our bear dog was no match for 3 bears at once and I tried shooting in the air, cracker shells, roman candles, and spot lights to make them leave, all to no avail. In the morning they were gone and I boarded up the wall they had went through with 2 layers of ¾" plywood. The next night they came back and broke through again. Again I was unable to make them leave. They even started charging me whenever I got close. The next day I boarded up the hole again and was shocked at how much food they had eaten and destroyed. I realized if this went on there wouldn't be anything left for my parents and I to eat that winter. The next night I shot one cub in the dark at 10' away as it charged and shot both the sow and other cub inside the lodge the following night. At the time I only knew this was the right thing to do and didn't consider if it was legal. One main difference in this situation as compared to the wolf/moose situation is that our winter food could be replaced in one day; the moose may not be able to be replaced for decades.

If you ask everyone that lives or spends time in Unit 19 I know virtually all would agree the right thing to do is to reduce wolf numbers rapidly and that it is long overdue and possibly too late. But just because something is right does not make it legal however. No matter how important I feel it to be to save viable caribou and moose populations it is wrong to take the law into my own hands. I ask you to again look carefully at my intentions, at the State

Constitutions mandate to the Department of Fish and Game, at my lack of any prior offenses except 2 speeding tickets, at the Board of Games intention of expanding aerial wolf control to include the area where we took wolves, at the likelihood of me ever doing anything to jeopardize my families future again, at the circumstances involved, at the extent to which my actions harmed the public, at how much Jackie and I have suffered already physically and emotionally, at how much we both have suffered already financially, at what motivated me, at the fact there are absolutely no limits on the number of wolves anyone, including non-resident aliens, can take either hunting or trapping, at the local peoples feelings toward unregulated wolf numbers, at the fact that I have been steadily decreasing the number of hunts we conduct in Unit 19 to the point we may no longer be able to pay the land lease our lodge sits on, the fact that every State biologist I have talked to agree unchecked wolf numbers will continue to drive the moose population down, that I have exhausted every option possible to control wolf numbers legally, that I embarked on the wolf control program legally, that I felt under pressure to make the program a success, that the program ultimately ended up taking less than ½ the wolves specified, that my observations led me to believe wolves had eliminated all the caribou in one individual herd and would virtually eliminate all remaining moose within a large radius around Lime Village before the next winters program, that I was told by a current Board of Game member that if we shot wolves outside the area to just report that they were taken inside the area, that I was encouraged to poison wolves by a former State biologist, that several current Board of Game members told me it was much more important to kill wolves than to testify at the Board of Game , that you read carefully each and every letter sent in my behalf, that we assisted the troopers in every way possible in their investigation, that we were told by ADF&G that if more wolves weren't taken the program

may be cancelled, why were we the only team added to the original 4 teams that took less than ¼ of the wolves wanted in the first 4 months of a 6 month program? Wouldn't you add 30 teams to the program instead of one? They were averaging ½ of a wolf per team per month. If they needed 30 more wolves taken in 2 months they would need to add 30 teams, that every wolf we killed was near a freshly killed moose, that I gave my very best to the State to help with the control program – my best airplane that is the backbone of my ability to provide for my family, the best shotgun money could buy, the best ammo and my best intentions, that you request of Trooper Gibbens his personal feelings and thoughts of my intentions and why we did what we did and how we got to where we could do something illegal like this, that I have come very close to committing suicide over this, that I have been denied my right to the enjoyment of the rewards of my own industry as guaranteed by the State Constitution, that I accept responsibility for breaking the law, that I have voluntarily given up guiding since May 26, 2004, that I had told Tony Lee not once but twice to close my snare set down and he agreed both times, that you look very closely at what happened to my southern guide neighbor Jim Harrower and tell me that the strain of watching everything you have being wiped out might cause people to do something they would never consider otherwise.

My attorney has counseled me many times against bringing to attention the fact that I am a big game guide and that I make my living by killing moose and caribou among other animals. He says people invariably receive harsher penalties when it is brought out they are big game guides acting out of greed and they did something illegal just to make more money at the expense of a public resource. It is also of great concern that we take a very valuable and much depended upon source of food from the

residents of Alaska and give it to rich people who don't live in Alaska and may not even live in the United States.

First I would like to point out that less that 1% of all the meat produced by our business leaves the State. A large portion of meat is given to Alaskan residents who are unable or too old to hunt anymore and the rest is divided between my family, my guides and others who would kill their own moose if moose meat weren't given to them. I figured out the difference between a moose killed by one of my clients and a moose killed by one of my guides. Both moose would be eaten by my guide but the one killed by a client would also help employ at the very minimum 8 Alaskan residents with the approximately $15000.00 he will leave in the State.

More importantly if someone was only interested in money and didn't care about the resource wouldn't you think they would have charged a rich hunter $5000 to shoot just one wolf from the air? Wouldn't it be even better to charge $20000 to shoot a 70" moose from the air when there was no snow on the ground to record you did something illegal? What about $30000 for a guaranteed 10' brown bear that also represents a fraction of the risk of killing wolves in the snow?

What we did does indeed benefit my guide business along with subsistence users and especially those who will come to depend on moose and caribou in the future. It may preserve a resource that my business, lodge, cabins, camps and land leases must have to survive. If the moose resource goes much lower than what exists at this moment in time I will be forced to give up or burn our lodge, cabins, camps, and leases - as Mr. Harrower has had to do. This may not seem a big sacrifice to some but to me who grew up in the wilderness it is a very beloved and integral part of

my life's dream that I hoped my kids would be able to continue.

If I was looking to just make money with no regard to the resource would I have spent the many thousands of dollars and untold hours educating the legislators in Juneau, the BOG all over the State, the Governor, started Alaska's Western Wildlife Alliance, became a member of Kenai Fish & Game Advisory Committee, and sent out literally thousands of letters explaining what was happening to the moose and caribou of Unit 19 from wolf predation?

If I wanted to just make money why did I fly for over 30 hours inside the open wolf control area looking in vain for wolves when it costs me at least $100 per hour to operate my plane out there?

Again I urge you to remember Jim Harrower who was my neighbor to the south and east if you think I am not serious when I tell you we are hanging on by a thread. This year Mr. Harrower was forced to give up his beautiful lodge, cabins, camps, and leases on the Stony River which represented 27 years of hard work and an investment that is incalculable. This was a catastrophic blow to Mr. Harrower.

(Read Harrower's letters to Knowles at this time)

As Mr. Harrower indicated in his letters to then Governor Knowles many subsistence users and guides have considered suing the State for mismanagement of wildlife resources in violation of the State Constitution.

I received a phone call on November 1, 2004 from a board member of the Alaska Professional Hunters Association. Due to the increasing numbers of guides in

western Alaska that have lost and will lose their guide businesses and lodges APHA is starting action to file suit against the State of Alaska. I will be included in this action as I am one of the many APHA members that are losing his lodge and business.

In closing I hope you realize just how grim the situation really is and the hardship and strain endured by both guides and subsistent users alike for the past 10 years. Also that both Jackie & I voluntarily gave up our fall guide season, which represents ¾ of our combined yearly income. This is a very steep price to pay – especially for a family raising 2 kids. I did not do this for any monetary gain – I did it to protect the future of a resource I hope everyone, including my kids, will one day be able to depend upon again. I tried every legal available means to do this until it became such a biological emergency I lost my perspective. As everyone who has tried to cheer me up in the past 8 months has said – I'm only human and humans make mistakes.

When it comes time to sentence Tony Zellers you must remember it was my idea to get the aerial wolf control permit, that I was the one deciding where we should fly, that in most instances I am the employer and Tony the employee, and that I was constantly making observations at the unbelievable low numbers of moose and caribou where 10 years ago there were thousands - pretty much telling him all the reason I felt why it was so vitally important to reduce wolf numbers before they finished off any remaining moose and caribou.

I give you my word I will never knowingly break another game law for the rest of my life. ***Read letters of support now***

"s/" Dave Haeg

APPENDIX X

November 8, 2004: In the District/Superior Court for the State of Alaska Third Judicial District at McGrath. State v. Haeg, Case No. 4MC-S04- Cr. Notice of Supplemental Letter.

NOTICE OF SUPPLEMENTAL LETTER FOR SENTENCING HEARING

David Haeg, by and through his counsel, hereby submits his supplemental letter for consideration during the sentencing hearing in the above-captioned case scheduled before Magistrate Murphy in McGrath on November 9, 2004, at 10:30 a.m.

Dated this 9th day of November 2004, at Anchorage, Alaska.

MARSTON & Cole, P.C.
Attorneys for Defendant

By: "s/"
Brent R. Cole
AK Bar No. 860674

I certify that a copy of the foregoing document w/attachment was faxed to Scot H. Leaders.

By: "s/"
11/8/04

APPENDIX Y

March 31, 2005 - In the District Court for the State of Alaska at McGrath, State v. Haeg, Case No. 4MC-04-024 Cr.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INFORMATION

... The board exercised its prerogative. The means and methods authorized in a permit issued under the wolf control program are independent of all other methods and means restrictions in AS 16 and title 5AAC. (See 5 AAC 92.039 (h).) A wolf reduction program regulation established by the Board is independent of, and does not apply to hunting and trapping regulations, authorized in Title 5AAC. (See 5 AAC 92.110(m)). Violation of AS 16.05.783 is a misdemeanor, and upon conviction is punishable with a fine of $5000, one year in prison, or both. In addition, the court may forfeit to the state any equipment used in the violation. ...

Dated at Soldotna this 31 day of March 2005.

Robinson & Associates

"s/"
By: Arthur S. Robinson
ABA No. 7405026

APPENDIX Z

May 6, 2005 - In the District Court for the State of Alaska at McGrath, State v. Haeg, Case No. 4MC-04-024 Cr.

AFFIDAVIT OF DAVID HAEG

"1. I am defendant in the above captioned case. I have personal knowledge of the matters stated in this affidavit.

2. From June 2004 to November 2004 I was engaged in plea negotiations with the State's prosecutor Mr. Leaders concerning the filing of state game charges against me.

3. The plea negotiations came to an end on November 8, 2004. The prosecutor, at the last minute, back out of an agreement I thought was reached. The negotiations ended without a PA between myself and the state. The prosecutor thereafter filed an amended information

4. I appeared in court on November 9, 2004, for arraignment on the amended information that charges me with numerous violations of state game laws. I pleaded not guilty to all of the charges. The court scheduled a jury trial for me to stand trial on the charges.

5. During the plea negotiations, I gave statements to the police regarding accusations of game violations that are in the statements in support of the three informations filed by the prosecutor in my case. These statements from the prosecutor are used to establish probable cause that I committed the crimes alleged in the informations. Without a plea agreement between me and the State these statements shouldn't be used to establish cause to believe I committed any of the crimes charged."

"s/"

David Haeg

SUBSCRIBED AND SWORN to before me this 6th day of May 2005.

"s/" Irene Robinson, Notary Public in and for Alaska

APPENDIX AA

Robinson & Associates
Lawyers
35401 Kenai Spur Highway
Soldotna, Alaska 99669
Tele: (907) 262-9164 Fax: (907) 262-7034 l(800) 770-9164
E-mail: office&robinsonandassociates.net

September 21, 2005

Brent Cole, Esq.
745 W. 4th Ave., Suite 502
Anchorage, Alaska 99501
Via Fax: 277-8002

Re: State v. David Haeg
Case No. 4MC-04-24 Cr.

Dear Mr. Cole:

This is a reminder that David Haeg's sentencing has been continued to September 29th at 1:00 p.m. The hearing is anticipated to take all afternoon. Your testimony will be telephonic. I apologize that I cannot give you an exact time that you can expect the call.

If you have any questions, please don't hesitate to call me. We appreciate your continued patience with this process and your willingness to testify on Mr. Haeg's behalf.

Best regards,
"s/"
Bonnie Burger
Legal Assistant to Arthur Robinson

/bb

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT BETHEL

SUBPOENA TO APPEAR/PRODUCE

TO: Brent Cole	Other Info:
DOB :	SSN:
Home Phone:	Work Phone:
Home Address:	Work Address: 745 W. 4th Ave., Suite 502 Anchorage, AK 99501

You are commanded to appear at the State Courthouse to testify in the case of:

Case Name: State v. David Haeg
Date: 9/1/05 Time:- Case No. 4MC-04-24CR
Court Address: Telephonic McGrath Sentencing Hearing

If you fail to appear and testify as ordered, a warrant may be issued for your arrest. This subpoena shall remain in effect from the date you are required to appear until you are granted leave to depart by the court or by an officer acting at the direction of the court.

You are ordered to bring with you:

You are entitled to witness fees and (if you live more than 30 miles from the court) travel and living expenses. You are not, however, entitled to advance payment of these fees if this subpoena is issued at the request of the state, city, borough, Public Defender Agency or other court-appointed counsel. Contact the attorney's office listed below to arrange for payment of fees. You must contact the attorney's office before you travel if you want to be paid travel expenses.

This subpoena does not require you to appear anywhere except the court at the above address. However, please call the attorney's office listed below on the afternoon of the working day before your scheduled appearance to find out whether you are still required to appear, the time to appear and other instructions. *Failure to call the attorney's office may make you ineligible for payment of witness fees and travel and living expenses.*

August 22, 2005 — "s/"
Date — Natalie Alexie, Clerk of Court

Subpoena issued at the request of:

Seal of The
Trial Courts
of the State of Alaska
Fourth Judicial District

Arthur S. Robinson
Attorney for: David Haeg
Address: 35401 Spur Hwy. Soldotna, AK
Telephone: 262-9164
If you have any questions, please contact
the attorney listed above.

RETURN

I served the above subpoena on the person to whom it is addressed, on ,20 , in Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance, except as provided in Criminal Rule 17.

Signature Title Type or Print Name

CR-340 BETHEL (1/02)(st.3) Crim. R.17
SUBPOENA TO APPEAR/PRODUCE Admin. R.

COMPLETE THIS SECTION ON DELIVERY

A. Signature (x) Agent
X - "s/" ( ) Addressee

B. Received by (Printed Name) C. Date of Delivery
"s/" 8/25/05

D. Is delivery address different from 1? ( ) Yes
If YES, enter address below: ( ) No

3. Service Type
(x) Certified Mail ( ) Express Mail
( ) Registered (x) Return Receipt for Merchandise
( ) Insured Mail ( ) C.O.D.

4. Restricted Delivery? (Extra Fee)

2. Article Number 7003 1680 0002 5117 0876
(Transfer from service label)

RECEIVED
AUG 29 2005
Robinson & Associates
Lawyers

From: "Alaska/Horizon Airlines" Alaska.lT@AlaskaAir.com
To: <haeg@alaska.net>
Sent: Friday, January 27, 2006 12:15 PM
Subject: Alaska Airlines/Horizon Air Confirmation Letter for 9/29/05

Thank you for choosing Alaska Airlines / Horizon Air!

For questions, changes or cancellations on an Alaska Airlines or Horizon Air purchased or Mileage Plan award ticket, please call 1 -800-ALASKAAIR (1 -800-252-7522) for Alaska Airlines, or 1-800-547-9308 for Horizon Air. (If calling from Mexico, precede these telephone numbers with 001 .) For questions, changes, or cancellations on an American Airlines, British Air, Continental Airlines, Delta Air Lines, Hawaiian Airlines or Northwest Airlines Partner Award ticket, please call the Partner Desk at 1-800-307-69 12.

Confirmation Code: ETDMSD
Name: Cole/BRENT
Ticket Number: 027-2 128444 143
Base Fare: 0.00
Tax: 0.00
Total: 0.00
Mileage Plan: None

REMINDERS AND RESTRICTIONS
This electronic ticket is not transferable. If you choose to change your itinerary, any fare increases and a change fee will be collected at the time the change is made.

PAYMENT INFORMATION
The amount of $0.00 (USD) was charged to the Visa Card * ***** * * * * ** 1740 held by JACKIE Haeg on 9/28/2005,

using electronic ticket number 027-2128444143. This document is your receipt.

ITINERARY
September 29 2005
PenAir 235
Depart: Anchorage, AK at 8: 15 AM
Arrive: McGrath, AK at 9: 15 AM
Seats: Contact operating carrier for seat assignments, Y Class

September 30 2005
PenAir 236
Depart: McGrath, AK at 9:45 AM
Arrive: Anchorage, AK at 10:45 AM
Seats: Contact operating carrier for seat assignments, Y Class

56 Questions for Brent Cole to be asked at sentencing

1. Did David Haeg hire you in April 2004 to represent him against the State of Alaska?

2. Did you advise him to cooperate with the States investigation so as to obtain a satisfactory plea bargain that Mr. Haeg could live with?

3. Did this advice include giving the State a very detailed map of all locations, dates, and times including the over half the State had no knowledge of?

4. Did you also advise Mr. Haeg to give the State an interview in which you urged him to give a very detailed description of his activities? Also including the over half the State had no knowledge of?

5. Did this interview take place in your office with Mr. Haeg, Mr. Stepnosky, Mr. Gibbens, Mr. Leaders and yourself present?

6. How long did this statement take?

7. Was Mr. Haeg's statement made before Tony Zellers made any such statement?

8. Did you advise Mr. Haeg to cancel all magazine advertisements in anticipation of the plea agreement?

9. Did you advise Mr. Haeg to cancel all hunts after June 1, 2004 in anticipation of the plea agreement?

10. After Mr. Haeg's map and interview was given to the State was this information leaked to the press in violation of the rules governing plea negotiations?

11. On or about November 1, 2004 did plea negations end with a Rule 11 agreement between Mr. Leaders and Mr. Haeg in which Mr. Haeg agreed to plead to AS8.54.720 (a)(8)(A) main charges and other lesser charges, with opening sentencing with the agreement Mr. Haeg would discuss Doug Jayo's moose hunt and that he would loose his guide license for 1 to 3 years – to be decided by Magistrate Murphy in McGrath on November 8, 2004?

12. Did Mr. Haeg in the week between the making of the Rule 11 agreement and the breaking of it ask 3 times whether or not it could be broken?

13. Did you tell Mr. Haeg each time "No, it is a binding agreement"?

14. Did Mr. Leaders then break this Rule 11 agreement about a week later when he faxed you, Kevin Fitzgerald, and Magistrate Murphy an amended information at 1:00 pm on November 8, 2004 which changed AS8.54.720(a)(8)(A) charges to AS8.54.720(a)15(A) charges?

15. Did these new charges carry a much more severe penalty?

16. Do you think these new charges were filed to penalize Mr. Haeg for exercising his right or privilege to be open-sentenced by Magistrate Murphy?

17. Do you think these new charges were filed to penalize Mr. Haeg for exercising his right or privilege to be allowed to complete an agreed to Rule 11 agreement?

18. Did the breaking of the Rule 11 agreement by Mr. Leaders happen only 5 business hours before yourself, Mr. Haeg, Mrs. Haeg, Tom Stepnosky, Tony Zellers, Kayla Haeg, Cassie Haeg, Drew Hilterbrand and Jake Jedlicki were committed to fly to McGrath to execute it?

19. Did you know Mr. Haeg was flying Mr. Zellers in from Illinois, Drew Hilterbrand from Silver Salmon Creek, taking Mr. Jedlicki from work, Kayla Haeg from school and costing Mr. Haeg nearly $6000.00 in airfare, hotel, and driving expenses to comply with the Rule 11 agreement?

20. Did you inform everyone in the Haeg party when they arrived at your office at 4:00 pm November 8, 2004 that you had just hours before received a fax from Mr. Leaders which contained "bad news"? Did you inform all of them that the bad news was that the charges Mr. Haeg was to plead to in McGrath the next morning had been changed too much harsher ones?

21. Did Mr. Haeg ask you how could this be after your assurances in the days before this could not happen?

22. Did you tell Mr. Haeg, Mrs. Haeg, Tom Stepnosky, Tony Zellers, Drew Hilterbrand, Jake Jedlicki, Kayla Haeg, and Cassie Haeg that because of the new charges they shouldn't go to McGrath for the completion of the Rule 11 agreement on November 9, 2004?

23. Did Mr. Haeg ask you if there was a way to force Mr. Leaders to honor the agreement?

24. Did you tell Mr. Haeg the only thing you could do would be to file a complaint with Mr. Leaders boss – a woman you had formerly worked with?

25. Did you ever file this complaint?

26. What is the lady's name?

27. Did Mr. Haeg repeatedly ask you if you had filed the complaint?

28. What was your response?

29. Do you remember saying, "I left her a message and she hasn't got back to me"?

30. Why did you fail to enforce Mr. Haeg's right to have the State honor the Rule 11 agreement?

31. Did you tell Mr. Haeg "I can't piss Leaders off because after your case is done I still have to make deals with him"?

32. In the weeks after Mr. Leaders broke the rule 11 agreement did you make this same statement 2 more times?

33. Why did you never tell Mr. Haeg the agreement he had with Mr. Leaders was a binding one called a Rule 11 agreement?

34. Are you sure it wasn't because you didn't want to fight for Mr. Haeg's rights against Mr. Leaders?

35. Wouldn't you agree the $200 per hour Mr. Haeg was paying you included defending Mr. Haeg's rights?

36. After you failed to defend Mr. Haeg are you surprised that he fired you?

37. Why would you advise anyone to accept a Rule 11 agreement with the State if the State can change the conditions of the deal and then force the defendant to accept it? And if they don't go through with the change of plea with the new conditions set by the State the State gets to claim the defendant broke the deal and still make the defendant pay the price demanded by the State while the State then honors nothing, nothing, nothing on their part?

38. When Mr. Haeg asked you if he could complain to Magistrate Murphy about Mr. Leaders actions did you reply, "She will tell you anything you say can and will be used against you in a court of law"?

39. Was this to discourage Mr. Haeg from complaining of Mr. Leaders breaking of the Rule 11 agreement?

40. Would you agree that after you agreed to represent Mr. Haeg for $200 per hour this included defending Mr. Haeg's rights to conclude the Rule 11 agreement you negotiated?

41. Do you think it just that Mr. Haeg is now being forced to comply with the parts of the Rule 11 agreement required by Mr. Leaders yet not receive any of the parts required by Mr. Haeg?

42. Do you think it just that Mr. Leaders can ignore the concessions made to the Rule 11 agreement by Mr. Haeg such as providing the map, statement, cancellation of a whole seasons hunts, and all the money and time wasted on the McGrath trip of November 9, 2004?

43. At any time did Mr. Leaders indicate he was going to file charges in connection with Doug Jayo's moose hunt in September 2003?

44. Was there ever a deal that in return for Mr. Haeg to discuss the moose hunt he would not be charged in connection with the moose hunt?

45. Wasn't the exact opposite true?

46. That Mr. Haeg requested he be charged in connection with Mr. Jayo's moose hunt so it could not influence the outcome of the wolf issue?

47. Did you ever state to Mr. Haeg, "When Leaders screwed you he also screwed me"?

48. Did you ever make a statement to the effect that Mr. Leaders broke the Rule 11 deal because it was likely Magistrate Murphy would be lenient and not order forfeiture of Mr. Haeg's airplane?

49. Mr. Cole have you ever been a prosecutor for the State of Alaska?

50. Do you think Mr. Haeg has been treated legally, fairly and with justice by you, Mr. Leaders, and the system so far?

51. You have maintained there were "many deals" yet is it not true there was only one deal that both Mr. Haeg and Mr. Leaders agreed to?

52. The same one Mr. Leaders broke on November 8, 2004?

53. Did Mr. Haeg <u>ever</u> agree to forfeit the PA-12 airplane without that being decided by Magistrate Murphy?

54. After Mr. Leaders broke the first Rule 11 agreement did he offer to make a new Rule 11 agreement which first required Mr. Haeg to forfeit the PA-12 airplane?

55. If the State broke the first Rule 11 agreement yet got to keep what was conceded by Mr. Haeg why would they not break the second Rule 11 agreement and keep the PA-12 airplane?

56. What is the sense of anyone making a Rule 11 agreement with the State if the State can break it and keep what was given up and promised by the defendant?

APPENDIX BB

56 Questions for Brent Cole to be asked at sentencing

57. Did David Haeg hire you in April 2004 to represent him against the State of Alaska?

58. Did you advise him to cooperate with the States investigation so as to obtain a satisfactory plea bargain that Mr. Haeg could live with?

59. Did this advice include giving the State a very detailed map of all locations, dates, and times including the over half the State had no knowledge of?

60. Did you also advise Mr. Haeg to give the State an interview in which you urged him to give a very detailed description of his activities? Also including the over half the State had no knowledge of?

61. Did this interview take place in your office with Mr. Haeg, Mr. Stepnosky, Mr. Gibbens, Mr. Leaders and yourself present?

62. How long did this statement take?

63. Was Mr. Haeg's statement made before Tony Zellers made any such statement?

64. Did you advise Mr. Haeg to cancel all magazine advertisements in anticipation of the plea agreement?

65. Did you advise Mr. Haeg to cancel all hunts after June 1, 2004 in anticipation of the plea agreement?

66. After Mr. Haeg's map and interview was given to the State was this information leaked to the press in violation of the rules governing plea negotiations?

67. On or about November 1, 2004 did plea negations end with a Rule 11 agreement between Mr. Leaders and Mr. Haeg in which Mr. Haeg agreed to plead to AS8.54.720 (a)(8)(A) main charges and other lesser charges, with opening sentencing with the agreement Mr. Haeg would discuss Doug Jayo's moose hunt and that he would loose his guide license for 1 to 3 years – to be decided by Magistrate Murphy in McGrath on November 8, 2004?

68. Did Mr. Haeg in the week between the making of the Rule 11 agreement and the breaking of it ask 3 times whether or not it could be broken?

69. Did you tell Mr. Haeg each time "No, it is a binding agreement"?

70. Did Mr. Leaders then break this Rule 11 agreement about a week later when he faxed you, Kevin Fitzgerald, and Magistrate Murphy an amended information at 1:00 pm on November 8, 2004 which changed AS8.54.720(a)(8)(A) charges to AS8.54.720(a)15(A) charges?

71. Did these new charges carry a much more severe penalty?

72. Do you think these new charges were filed to penalize Mr. Haeg for exercising his right or privilege to be open-sentenced by Magistrate Murphy?

73. Do you think these new charges were filed to penalize Mr. Haeg for exercising his right or privilege to be allowed to complete an agreed to Rule 11 agreement?

74. Did the breaking of the Rule 11 agreement by Mr. Leaders happen only 5 business hours before yourself, Mr. Haeg, Mrs. Haeg, Tom Stepnosky, Tony Zellers, Kayla Haeg, Cassie Haeg, Drew Hilterbrand and Jake Jedlicki were committed to fly to McGrath to execute it?

75. Did you know Mr. Haeg was flying Mr. Zellers in from Illinois, Drew Hilterbrand from Silver Salmon Creek, taking Mr. Jedlicki from work, Kayla Haeg from school and costing Mr. Haeg nearly $6000.00 in airfare, hotel, and driving expenses to comply with the Rule 11 agreement?

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79. Did Mr. Haeg ask you if there was a way to force Mr. Leaders to honor the agreement?

80. Did you tell Mr. Haeg the only thing you could do would be to file a complaint with Mr. Leaders boss – a woman you had formerly worked with?

81. Did you ever file this complaint?

82. What is the lady's name?

83. Did Mr. Haeg repeatedly ask you if you had filed the complaint?

84. What was your response?

85. Do you remember saying, "I left her a message and she hasn't got back to me"?

86. Why did you fail to enforce Mr. Haeg's right to have the State honor the Rule 11 agreement?

87. Did you tell Mr. Haeg "I can't piss Leaders off because after your case is done I still have to make deals with him"?

88. In the weeks after Mr. Leaders broke the rule 11 agreement did you make this same statement 2 more times?

89. Why did you never tell Mr. Haeg the agreement he had with Mr. Leaders was a binding one called a Rule 11 agreement?

90. Are you sure it wasn't because you didn't want to fight for Mr. Haeg's rights against Mr. Leaders?

91. Wouldn't you agree the $200 per hour Mr. Haeg was paying you included defending Mr. Haeg's rights?

92. After you failed to defend Mr. Haeg are you surprised that he fired you?

93. Why would you advise anyone to accept a Rule 11 agreement with the State if the State can change the conditions of the deal and then force the defendant to accept it? And if they don't go through with the change of plea with the new conditions set by the State the State gets to claim the defendant broke the deal and still make the defendant pay the price demanded by the State while the State then honors nothing, nothing, nothing on their part?

94. When Mr. Haeg asked you if he could complain to Magistrate Murphy about Mr. Leaders actions did you reply, "She will tell you anything you say can and will be used against you in a court of law"?

95. Was this to discourage Mr. Haeg from complaining of Mr. Leaders breaking of the Rule 11 agreement?

96. Would you agree that after you agreed to represent Mr. Haeg for $200 per hour this included defending Mr. Haeg's rights to conclude the Rule 11 agreement you negotiated?

97. Do you think it just that Mr. Haeg is now being forced to comply with the parts of the Rule 11 agreement required by Mr. Leaders yet not receive any of the parts required by Mr. Haeg?

98. Do you think it just that Mr. Leaders can ignore the concessions made to the Rule 11 agreement by Mr. Haeg such as providing the map, statement, cancellation of a whole seasons hunts, and all the money and time wasted on the McGrath trip of November 9, 2004?

99. At any time did Mr. Leaders indicate he was going to file charges in connection with Doug Jayo's moose hunt in September 2003?

100. Was there ever a deal that in return for Mr. Haeg to discuss the moose hunt he would not be charged in connection with the moose hunt?

101. Wasn't the exact opposite true?

102. That Mr. Haeg requested he be charged in connection with Mr. Jayo's moose hunt so it could not influence the outcome of the wolf issue?

103. Did you ever state to Mr. Haeg, "When Leaders screwed you he also screwed me"?

104. Did you ever make a statement to the effect that Mr. Leaders broke the Rule 11 deal because it was likely Magistrate Murphy would be lenient and not order forfeiture of Mr. Haeg's airplane?

105. Mr. Cole have you ever been a prosecutor for the State of Alaska?

106. Do you think Mr. Haeg has been treated legally, fairly and with justice by you, Mr. Leaders, and the system so far?

107. You have maintained there were "many deals" yet is it not true there was only one deal that both Mr. Haeg and Mr. Leaders agreed to?

108. The same one Mr. Leaders broke on November 8, 2004?

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110. After Mr. Leaders broke the first Rule 11 agreement did he offer to make a new Rule 11 agreement which first required Mr. Haeg to forfeit the PA-12 airplane?

111. If the State broke the first Rule 11 agreement yet got to keep what was conceded by Mr. Haeg why would they not break the second Rule 11 agreement and keep the PA-12 airplane?

112. What is the sense of anyone making a Rule 11 agreement with the State if the State can break it and keep what was given up and promised by the defendant?

APPENDIX CC

October 14, 2005 - In the Court of Appeals of the State of Alaska, Docketing Statement D, For Use in Criminal Appeals from District Court Under Appellate Rule 217. Haeg v. State, Trial Court Case #4MC-S04-024Cr.

1. DEFENDANT: Name: David Haeg

2. DEFENDANT'S ATTORNEY IN APPEAL: Name: Arthur S. Robinson - Bar Number: 7405026

3. DEFENDANT'S ATTORNEY IN TRIAL COURT: Same.

4. PROSECUTING ATTORNEY: Scot Leaders - Bar Number: 9711067. Agency: Office of the District Attorney.

5. TRIAL COURT PROCEEDING: Case No. 4MC-04-024 Cr.; Trial Judge: Margaret L. Murphy; Date Judgment Distributed: 10-05-2005; Co-Defendant's Name: Tony Zellers; Co-Defendant's Trial Case No. 4MC-04-025 Cr.

6. JUDGMENT OR ORDER BEING APPEALED: a. Judgment (merit appeal or combined merit & sentence appeal) Provide the following information for each conviction being appealed.

Count No: I-V: Unlawful Acts by a Guide – Conviction Only.

Count VI – VII: Unlawful Possession of Game – Conviction Only.

Count VIII: Unsworn Falsification – Conviction Only.

Count IX: Trapping in Closed Season – Conviction Only.

7. RELATED PROCEEDINGS IN APPELLATE COURT: *n/a.*

8. ATTACHMENTS: a. (X) A copy of the final order or judgment from which the appeal is taken; b. (X) A statement of points on appeal; c. (X) A $100 filing fee; d. A designation of cassette tapes – (X) not submitted (no cassette tapes being requested).

Dated: October 14, 2005
"s/"
Arthur S. Robinson – Appellant's Attorney

APPENDIX DD

LAW OFFICE OF
MARSTON & Cole, P.C.
745 West Fourth Avenue, Suite 502
Anchorage, Alaska 99501-2136

Erin B. Marston
Brent R. Cole
Coleen J. Moore

Telephone (907) 277-8001
Telecopier (907) 277-8002

August 25, 2005

VIA FACSIMILE: 262-7034
Mr. Arthur S. Robinson:
Robinson & Associates
35401 Kenai Spur Highway
Soldotna, Alaska 99669

Re: SOA v. David Haeg
Our File No.: 102.484

Dear Chuck,

I am in receipt of the letter from your office dated August 22, 2005, in which a subpoena was enclosed for my appearance at Mr. Haeg's upcoming sentencing hearing. As I discussed with you in an earlier telephone conversation, I was not intending to be available on September 1, 2005, as it is opening day for duck and moose hunting season. I have already made plans to be out of the office. Please keep me advised as to the status of the hearing in this matter.

If you have any further questions or concerns, please do not hesitate to contact me. Thank you.

Very truly yours,
MARSTON & COLE, P.C.
"s/" Brent R. Cole

June 26, 2006 – In the District Court of the State of Alaska Fourth Judicial District, Haeg v. State, Case No. 4MC-S04-024 Cr., Appellate Court Case No. A-09455. Affidavit to Judge Dennis Cummings.

The Honorable Dennis Cummings,

First off I want to apologize for subjecting you to our (my wife Jackie & myself) lack of sophistication & professionalism in our current & future dealings with you.

I used to be a big game guide & have now found myself forced to become an attorney to protect the business & life I have built to provide for my family & their future.

I have absolutely compelling & irrefutable proof that my first attorney Brent Cole (Cole) sold me out to the prosecution. When I became suspicious because of all that was going wrong I had numerous conversations with Dale Dolifka (Dolifka), my business attorney (who used to be a criminal defense attorney), & other attorneys I know in the continental US. Because of my suspicions, confirmed by others, I fired Cole & hired Arthur Robinson (Robinson) who has been a long time friend of my family's. Things continued to go radically wrong & I ended up going to trial, being convicted, & sentenced to at least 6 times the penalty of Tony Zellers (my codefendant) who the prosecution said was equally culpable. During Zeller's sentencing then Magistrate Margaret Murphy Zeller's cooperation with the prosecution indicated rehabilitation because of his willingness to except responsibility for his conduct. The exceedingly strange thing in all of this is that it was I who cooperated first, implicating Zellers. Zellers who then did not want to cooperate cooperated. Then the State broke the Rule 11 Agreement for which Jackie & I had already given up an entire year of guiding which represents virtually everything both Jackie & I make for a whole year. The

State wanted more & more for the same deal that I had already paid so much for & when I asked Cole how they could do this he told me "that's the way it is" & I, realizing I was being held hostage by the State if this was the case, refused to give anymore then that which had already nearly bankrupt us. I ended up going to trial, nearly bankrupt, & with the State utilizing my own statements for the only evidence for over half the charges. Robinson, who took me to trial, told me that we could not enforce the Rule 11 Agreement because both the prosecution & Cole said it was "fuzzy" yet I have numerous emails, letters, & taped conversations that say otherwise. Robinson said my evidence would not matter in light of Cole & the prosecutions claim that the deal for which my wife & I had done so much was "fuzzy". In fact the State later claimed that I broke the deal & Robinson, who I now have realized was protecting Cole's malpractice, told me to never ever claim that I had a Rule 11 Agreement or to let anyone know how much Jackie & I had given up for it. He said doing so would jeopardize his "tactic". His "tactic" that the information the prosecution was not positively sworn to by the DA deprived the Court of jurisdiction. I researched this defense exhaustively & determined the reason why it was last a successful defense in 1909 since then it has been ruled harmless error and/or that the prosecutor's oath of office is all that is needed to file & information. In addition, when Robinson was still my attorney, I asked him what there was to stop the prosecution from showing the evidence they had of the Rule 11 Agreement to defeat our "tactic". Robinson was unable to give me a satisfactory answer & finally said something about personal jurisdiction versus subject matter jurisdiction would protect us. The result of all this is that the State got to claim that I broke the Rule 11 Agreement thus they got to make me comply with the rest of what we agreed upon for the Rule 11 Agreement yet I never got one single thing out of it including being able to say the State was the one that broke

the Rule 11 Agreement or that my family & I had done so much for it. The unfairness of this is almost incomprehensible to me. If my case is allowed to stand the prosecution will promise criminal defendants the world including not prosecuting them just so they can get confessions & bankrupt the defendant. Then, after the prosecution has everything & the defendant is bankrupt & cannot afford to hire a lawyer, the prosecution then takes the defendant to Court. Putting this on the other foot it would be like me telling the State I'll plead guilty to 25 felonies if they will just give me all of the evidence they have in my case. Then, after I've destroyed all of the evidence in my case, I tell them I am not going to plead guilty & want to go to trial. Now, since there is no evidence, I am pretty sure to win. Is this truly how the Criminal Justice System in the State of Alaska is going to be run?

After explaining what was going on to Dolifka & others they stated I needed to get an attorney from outside Alaska with no conflicts of interest in protecting my first two attorneys and to represent only me. My wife & I searched diligently for such an attorney but when we explained we had two attorneys who I told them I had proof of conflicts of interests & malpractice none would agree to represent me. I then started searching for an attorney close by, which I could show all of the evidence & work closely with so that the chance they would try to protect the first two attorneys would be unlikely. I found such an attorney in Mark Osterman (Osterman). I showed him the evidence I had & he said, "The sellout that happened was unbelievable" & that when the Court of Appeals saw it there would be no doubt but that they would reverse my conviction. Because of the problems with the first two attorneys I taped every single word Osterman has ever said to me. About a month later, after I have him on tape over & over telling me how amazing the actions of Robinson &

Cole were, he now tells me that he is unwilling to affect those attorneys lives & livelihoods & because of this he cannot show the actions of these attorneys to the Appellate Court.

Where does this leave the ignorant layman? It leaves me without the ability to hire an attorney willing to represent my interests without looking at what will happen to my former attorneys. Thus I have no other choice then to proceed on my own. I have many letters & taped conversations with other attorneys all of which indicate the same thing – don't become obsessed with this, except the consequences & "move on". In other words these attorneys, all of whom I've shown Cole & Robinson's actions just like I showed Osterman, all feel it is better to sacrifice my entire livelihood & infrastructure, with the resulting stress, physical, and financial hardship, then to hold the attorneys accountable for their part in this devastation of my families future. I am highly intelligent, read very fast & very effectively, & <u>all</u> the courts from the US Supreme Court on down, at least according to the overwhelming weight of case law, would be horrified at what has happened in my case.

Because I know they would be shocked & horrified I feel the compelling need to expose what has happened to me so it cannot & will not happen to anyone else. I may not be as practiced as other attorneys practicing before you but at least I have my interests & my family's interests at heart without the conflicting interests of trying to save someone else at our expense. The amount of law & opinions wrote on this subject is considerable. The amazing thing is that in all the case law that I have read, which is very considerable, there is not one in which the defendant has evidence of multiple attorneys conspiring to conceal the malpractice they intentionally caused the defendant at the defendant's own expense.

It is because of this unique situation I ask to be allowed to proceed Pro Se & I ask that you consider these motions I have included. When this case was remanded I talked to Laurie Wade, Chief Deputy Clear, of the Alaska Court of Appeals to see if you could consider these additional motions. Ms. Wade said that when a case is remanded for any reason the defendant/appellant is allowed to file any motions & that the District Court has the authority to consider the motions. Because of this I hereby respectfully you consider all motions included.

I, DAVID S. HAEG, swear under penalty of perjury that the statements made in the above letter to Judge Dennis Cummings are true to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.
"s/"
David S. Haeg

SUBSCRIBED AND SWORN TO BEFORE ME this 26 day of June, 2006.

"s/"

Notary Public in and for Alaska.

June 30, 2006 – In the District Court of the State of Alaska Fourth Judicial District, Haeg v. State, Case No. 4MC-S04-024 Cr., Appellate Court Case No. A-09455. Affidavit to Judge Dennis Cummings.

The Honorable Dennis Cummings,

First off I want to apologize for subjecting you to our (my wife Jackie & myself) lack of sophistication & professionalism in our current & future dealings with you.

I used to be a big game guide & have now found myself forced to become an attorney to protect the business & life I have built to provide for my family & their future.

I have absolutely compelling & irrefutable proof that my first attorney Brent Cole (Cole) sold me out to the prosecution. When I became suspicious because of all that was going wrong I had numerous conversations with Dale Dolifka (Dolifka), my business attorney (who used to be a criminal defense attorney), & other attorneys I know in the continental US. Because of my suspicions, confirmed by others, I fired Cole & hired Arthur Robinson (Robinson) who has been a long time friend of my family's. Things continued to go radically wrong & I ended up going to trial, being convicted, & sentenced to at least 6 times the penalty of Tony Zellers (my codefendant) who the prosecution said was equally culpable. During Zeller's sentencing then Magistrate Margaret Murphy Zeller's cooperation with the prosecution indicated rehabilitation because of his willingness to except responsibility for his conduct. The exceedingly strange thing in all of this is that it was I who cooperated first, implicating Zellers. Zellers who then did not want to cooperate cooperated. Then the State broke the Rule 11 Agreement for which Jackie & I had already given up an entire year of guiding which represents virtually everything both Jackie & I make for a whole year. The

State wanted more & more for the same deal that I had already paid so much for & when I asked Cole how they could do this he told me "that's the way it is" & I, realizing I was being held hostage by the State if this was the case, refused to give anymore then that which had already nearly bankrupt us. I ended up going to trial, nearly bankrupt, & with the State utilizing my own statements for the only evidence for over half the charges. Robinson, who took me to trial, told me that we could not enforce the Rule 11 Agreement because both the prosecution & Cole said it was "fuzzy" yet I have numerous emails, letters, & taped conversations that say otherwise. Robinson said my evidence would not matter in light of Cole & the prosecutions claim that the deal for which my wife & I had done so much was "fuzzy". In fact the State later claimed that I broke the deal & Robinson, who I now have realized was protecting Cole's malpractice, told me to never ever claim that I had a Rule 11 Agreement or to let anyone know how much Jackie & I had given up for it. He said doing so would jeopardize his "tactic". His "tactic" that the information the prosecution was not positively sworn to by the DA deprived the Court of jurisdiction. I researched this defense exhaustively & determined the reason why it was last a successful defense in 1909 since then it has been ruled harmless error and/or that the prosecutor's oath of office is all that is needed to file & information. In addition, when Robinson was still my attorney, I asked him what there was to stop the prosecution from showing the evidence they h ad of the Rule 11 Agreement to defeat our "tactic". Robinson was unable to give me a satisfactory answer & finally said something about personal jurisdiction versus subject matter jurisdiction would protect us. The result of all this is that the State got to claim that I broke the Rule 11 Agreement thus they got to make me comply with the rest of what we agreed upon for the Rule 11 Agreement yet I never got one single thing out of it including being able to say the State was the one that broke

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After explaining what was going on to Dolifka & others they stated I needed to get an attorney from outside Alaska with no conflicts of interest in protecting my first two attorneys and to represent only me. My wife & I searched diligently for such an attorney but when we explained we had two attorneys who I told them I had proof of conflicts of interests & malpractice none would agree to represent me. I then started searching for an attorney close by, which I could show all of the evidence & work closely with so that the chance they would try to protect the first two attorneys would be unlikely. I found such an attorney in Mark Osterman (Osterman). I showed him the evidence I had & he said, "The sellout that happened was unbelievable" & that when the Court of Appeals saw it there would be no doubt but that they would reverse my conviction. Because of the problems with the first two attorneys I taped every single word Osterman has ever said to me. About a month later, after I have him on tape over & over telling me how amazing the actions of Robinson & Cole were, he now tells me that he is unwilling to affect those

attorneys lives & livelihoods & because of this he cannot show the actions of these attorneys to the Appellate Court.

Where does this leave the ignorant layman? It leaves me without the ability to hire an attorney willing to represent my interests without looking at what will happen to my former attorneys. Thus I have no other choice then to proceed on my own. I have many letters & taped conversations with other attorneys all of which indicate the same thing – don't become obsessed with this, except the consequences & "move on". In other words these attorneys, all of whom I've shown Cole & Robinson's actions just like I showed Osterman, all feel it is better to sacrifice my entire livelihood & infrastructure, with the resulting stress, physical, and financial hardship, then to hold the attorneys accountable for their part in this devastation of my families future. I am highly intelligent, read very fast & very effectively, & all the courts from the US Supreme Court on down, at least according to the overwhelming weight of case law, would be horrified at what has happened in my case.

Because I know they would be shocked & horrified I feel the compelling need to expose what has happened to me so it cannot & will not happen to anyone else. I may not be as practiced as other attorneys practicing before you but at least I have my interests & my family's interests at heart without the conflicting interests of trying to save someone else at our expense. The amount of law & opinions wrote on this subject is considerable. The amazing thing is that in all the case law that I have read, which is very considerable, there is not one in which the defendant has evidence of multiple attorneys conspiring to conceal the malpractice they intentionally caused the defendant at the defendant's own expense.

It is because of this unique situation I ask to be allowed to proceed Pro Se & I ask that you consider these

motions I have included. When this case was remanded I talked to Laurie Wade, Chief Deputy Clear, of the Alaska Court of Appeals to see if you could consider these additional motions. Ms. Wade said that when a case is remanded for any reason the defendant/appellant is allowed to file any motions & that the District Court has the authority to consider the motions. Because of this I hereby respectfully you consider all motions included.

I, DAVID S. HAEG, swear under penalty of perjury that the statements made in the above letter to Judge Dennis Cummings are true to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

"s/"
David S. Haeg

SUBSCRIBED AND SWORN TO BEFORE ME this 26th day of June, 2006.

"s/"
Notary Public in and for Alaska.

APPENDIX FF

8/15/06 Remand Hearing McGrath

WOODMANCY: Ok and –uh- for the record Madam Clerk that was Mr. Haeg who spoke and he's waiving his attorney client privilege. –Um- so Mr. Osterman you wanted to say something, go ahead.
OSTERMAN: Your honor I do not wish to be subjected to any inquiry by Mr. Haeg, under the circumstances. I am still his attorney as of this moment –uh- I would object to anybody in a pro se – taking a pro se position with regard to me. The fact of the matter is Your Honor is it – it – if the courts goanna look at this and say –um- then – then the issue should be one of relevance of any question Mr. Haeg may have. If he wanders off relevance the court needs to shut down on the inquiry but I – I don't believe that he has the right to inquiry anything of me Your Honor.
HAEG: May I interject?
WOODMANCY: Yes I'll - what – what is your – what is your questioning – what is your line of questioning that you intend for Mr. Osterman?
HAEG: –Um- to rebut the - the statements he made about physical threats, to rebut the statements about money and then to definitely layout why I do not want him as an attorney and why his conduct shows specifically why I cannot have an attorney represent me. So - and I think that goes to whether I intelligently waive my right of an attorney because his example will specifically address all of my attorneys conduct and likely attorneys conduct in the future if I hire someone else.
WOODMANCY: Well that - I'm sorry that's not acceptable. The – the relationship you have with one attorney will not go to any attorney that exists in the world or actions by one attorney will not bleed over to the actions or possible actions of any attorney that you could find. I – I mean I'm – I can't make that - that quantum leap you understand

how what one person does relates to everyone in that profession. So ... (17:26)

HAEG: Well I would like the opportunity to present my argument because this – this is my turn to bring forth, on the record, what I feel has been done to me - the defendant. And I have a due process right to bring forth concerns I have to the court at the earliest opportunity. My feeling right now is that I will be shut down and this opportunity will pass and my case will be remanded to the Court of Appeals where I have no way to present evidence to them. They look at what's on the record. This is the hearing now. This is what is important to me and my family now and I need to get out on the record what I feel – and to me it's very - very important. I mean its - it has consumed 2 years of my life, over 1 million dollars, and I now have proof of what has happened and I want that proof on the – you know on the record and – and Mr. Osterman is a – a – a key player in this and I would just like to be able to question him with the courts ok.

WOODMANCY: Yeah I want to be clear on what you are here for. You are here to decide whether Mr. Osterman can withdrawal, first, and then we're goanna talk whether you can go pro se. All of these issues of how you've been treated doesn't matter. That's a venue for another court. The appellate court sent remanded this back or sent this back to –uh- District Court to decide only those 2 issues. I'm not goanna decide any other issues in this case, I'm not goanna validate any positions, I'm not going to –uh- be a venue for you to air all of which you feel are the ills against you because it's an improper venue for that. (19:17) There is proper venue. You want to be an attorney, you want to represent yourself the first thing you have to learn is when you have a hearing you have to address the issues in that hearing not anything you want to address and so these issues are goanna be whether Mr. Osterman can withdrawal. So if you want to ask him a question related to what he said today about the financial matter it need to be

to the point – I'll allow that. If you want to ask him a question about the alleged threat I will allow that. But I'm not goanna allow you to air your dissatisfaction with people who aren't here, with people who cannot counter, and I'm not goanna have an evidentiary hearing about effectives of counsel here. Is that clear? (19:59)
HAEG: Yes it's clear but I - what I feel is that through my research – and you're correct I am not an attorney and I'm at a great disadvantage here. I understand that...
WOODMANCY: Well we'll get to that part in a minute.
HAEG: But what I'm getting at is I have every right to question my attorney about his actions in my case.
WOODMANCY: In the proper venue that's true. This is not the proper venue for that.
HAEG: What is the proper venue? And –um- I - I'm trying to be respectful and whatever. I cannot – I cannot see the Court of Appeals has no – they can only look what's on the record here and now. This is the proper venue. I - I beg to differ. This is the proper venue. The Court of Appeals cannot take new evidence. They can only look at what has happened here and now. When it gets there I am shut out. I have no – I have nowhere to complain about constitutional rights of mine that were violated. This is the here and now. This is where I bring this up. I asked the Court of Appeals about that. They said this is the proper venue. I talked to the Chief Deputy Clerk of the Court of Appeals at length about this and she said when this case is remanded this case is a continuation of my former case and any questions about my rights being violated has to come here because they cannot be brought forth in the Court of Appeals because they look at the record. They do not make the record. They look at the record for errors. (21:32) Well if mine – if I am not allowed to bring a complaint of my rights being violated here I cannot bring them in the Court of Appeals. Here and now we bring forth my complaint and if they're settled the way I like them fine – if they're settled the way the State likes them fine. Then since they're on the

record the Court of Appeals can look at them and make a determination on whether those decisions were made correctly but if nothing is on the record the Court of Appeals looks at nothing.
WOODMANCY: The allegations that you're goanna bring there's been no motions from you for witnesses, no motions for testimony –um- this - this...(22:23)
HAEG: I was told by you that I could not...
WOODMANCY: I – you were told by me that this hearing was goanna be about whether Mr. Osterman could withdrawal and you could proceed pro se. After this hearing if you wish to precede pro se and ask that the Court of Appeals to extend remand while you file motions in court – that's fine. That's the proper venue. Mr. Osterman on the phone – Mr. Rom they know these things. That's – that's why you've had – you're goanna get this day in court to find out how to do these things. This is not the venue – the witnesses aren't here. How do you expect this to take place in the next 10 minutes when it cannot and will not?
HAEG: I – I understand that totally and you are entirely correct. But there is one witness here now and his name's Mark Osterman and I would like to at least get on the record my concerns about his behavior.
WOODMANCY: You can't bring me one paragraph out of one decision and say I want you to rule based on this cause that won't happen, that can't happen. (Indecipherable)
HAEG: I understand – ok I understand and you know I understand that I may be shut down on almost – on many things here but I also understand that this is about me and my rights and my rights to a fair trial and as a pro se defendant - oh and I would like to bring up criminal rule 35.1 Jackie if you have it. But they say that pro se defendants because they are at a severe disadvantage are generally allowed leeway as for the procedure. Rule – Alaska Criminal Rule 35.1 says pro se defendants - the court in considering pro se requests for post-conviction

relief – and this is after conviction relief I am asking for – this is exactly the venue it has been brought in the trial court. It says that the pro se...
ROM: I'm goanna have to object to this argument. This is clearly outside the focus...
HAEG: This is the law.
ROM: No. This is not a Rule 35.1 hearing. There's been no petition filed for post-conviction relief – we are not here to argue post-conviction relief.
HAEG: I would just like to layout...
WOODMANCY: [Wa] [wa] wait a minute.
HAEG: Ok.
WOODMANCY: Now let me explain something. When there's an objection made the other party has to stop talking. Then the person making the objection makes the objection and bases what it is on. This is in all hearings. The court makes a decision before you proceed. And - and I agree Mr. Haeg the objection will be sustained because no one has any notice that this was goanna occur. This is not – court is nothing like what you've seen on TV your whole life. Where somebody jumps up quick with surprise at the end and says I'm goanna invoke this rule and nobody knew about it but me - so I win. That doesn't occur Mr. Haeg. There's legal notice. If you want to have a – a post relief hearing you – you file for it. When you're allowed to go pro se you can do these things - if you're allowed to go pro se. Do – do – do you understand procedure here? You can't come in and say [we] we're here to see if my attorney can withdrawal but I want to win this other part of my case while I am here. Because we're not going to do that – we are not going to do that. I want to make that clear.
HAEG: And that brings up a point I would like to make on the record is that the Court of Appeals has sent this back only for the decision to be made whether I knowingly and intelligently waive my right to counsel. It said that all other motions – Mr. Osterman being allowed to withdrawal – none of those were being granted by the Court of Appeals

and none of them were specifically set forth to be granted by this court but you have said that it is. And if you look where Mark Osterman's motion to withdrawal is that I have about 10 motions so I respectfully request this court if you rule on Mark Osterman's motion to withdrawal if you rule on my motions also that the State has copies of, notice of and there are...

WOODMANCY: I can tell you that I'm goanna rule on all of your motions that have been presented pre pro se today I can tell you that.

HAEG: Ok.

WOODMANCY: I – I've already figured out my ruling on them. They're goanna be denied.

HAEG: Ok.

WOODMANCY: You can re-file once you are allowed to go pro se. But you can't have a defendant and an attorney filing motions at the same time. You and I had this discussion.

HAEG: Ok. May Mr. Osterman be placed under oath at this time?

WOODMANCY: Mr. Osterman placed under oath he's an – he's your attorney.

HAEG: I thought I asked if he can be placed under oath.

WOODMANCY: Madam Clerk - lets swear Mr. Osterman in.

MADAM CLERK: Mr. Osterman will you please raise you right hand.

OSTERMAN: Yes.

MADAM CLERK: Is your right hand raised?

OSTERMAN: Yes.

MADAM CLERK: Do you solemnly swear or affirm that the testimony you will give in the case now before this court will be the truth whole truth and nothing but the truth?

OSTERMAN: I do.

MADAM CLERK: Thank you (sic)

WOODMANCY: Mr. Osterman please state your name and spell it for the record please.

OSTERMAN: Mark D as in David Osterman. My last name is spelled O S T E R M A N.
WOODMANCY: Thank you.
HAEG: Ok Mr. Osterman on – I'm not very good at this I apologize. I lost where – did you - on 3/15/06 did you have a conversation with me where you stated that each point on appeal is between 3 and 5 thousand dollars?
OSTERMAN: I may have given you that quote I thought I would say around $8,000 (sic)
HAEG: So when you told the court – when you told the court that you told me $8,000 per point were you double what you told me then? (33:42)
OSTERMAN: I don't believe so – I mean we just finished a matter in the Supreme Court and we had a fairly good idea what it cost us in that case and a couple of other matters that we processed and handled for others?
HAEG: Ok was - was that the case that cost $22,000.00?
OSTERMAN: Approximately yes we have one case that's cost us about that.
HAEG: Ok was that a case where the defendant was down in the lower 48 states?
OSTERMAN: Yes.
HAEG: Do you remember telling me that was the entire amount the case cost?
OSTERMAN: Yes.
HAEG: Ok then did you say that since my case was – I was in state, the case was taking place in state, and that that I had done most of the legwork my case to completion would be about $10,000.00 less then the $22,000.00?
OSTERMAN: I don't believe I said that. The issue of whether somebody's in state or out of state isn't the issue. My client was in state – opposition was out of state. But that particular opponent never filed any documents in the Supreme Court. So I was only against - up – up against an attorney general in that particular case.
HAEG: Ok. Including what you say you cut off of my bill - what's your total billings to me, to date?

OSTERMAN: I believe I just saw a billing statement prepared a couple days ago. I believe that the current bill that you owe is about I think 12 – 12,000.00.
WOODMANCY: Go ahead Mr. Osterman finish your statement.
OSTERMAN: During the time of the – the changing of the tape by the clerk I got a look at the a –um- billing files and the amount being billed is $19,077.00.
HAEG: Ok what Mr. Osterman what is the total billings without any –uh- oh –um- things cut off for that you said were overruns – what's the total billings that you gave me?
OSTERMAN: I – I couldn't tell you that off the top of my head.
HAEG: Could it be...
OSTERMAN: I have no idea.
HAEG: Could it be in the neighborhood of $36,000.00?
OSTERMAN: I don't think so. But again I can't tell you off the top of my head.
HAEG: Ok and –uh- is that $36,000.00 was that for the completion of my case?
OSTERMAN: Again I don't know.
WOODMANCY: He doesn't know the amount – he can't (sic)
HAEG: Ok. Have you Mr. Osterman have you completed my case?
OSTERMAN: No I have not completed your case.
HAEG: Ok so if the – the billings you have given me for $36,000.00 that's not even to completion - is that correct?
OSTERMAN: –Uh- well again I don't know what you have or have not paid –uh- to date except for you know the retainer which you seem to know about –um- but –uh- I can only tell you that we were at the 2nd draft on your brief – um- we were at the very – we were over the top of the hump with most of the work.
HAEG: Ok and you say again that the $8,000 dollars per point was incorrect that you –uh- told this court earlier - is that correct?

OSTERMAN: You – you say that I gave a - a lesser quote – if that's the case I will leave it to your recollection sir. (38:37)
HAEG: Ok well – I guess I'm supposed to ask questions. I was goanna make a statement. –Um- as far as the physical threats that you say that I made. Can you expound about how those alleged physical threats came about?
OSTERMAN: –Uh- Mr. Haeg you had become so enraged in my office that I - I didn't know if you were be able to get yourself back under control. –Uh- you'd became so enraged at times with my staff that my associate attorney Haden Greer left instructions that if you were to come into the office building that my staff would summon the police immediately until – at least until I had returned. Cause Mr. Greer felt that I can control things - if you were to come in the office. –Um- I felt so compelled by the threat that you made against Chuck Robinson that I actually called him and warned him. Cause I felt that it was absolutely necessary that he be informed. I felt that his life was in danger. That's how compelling I felt about those threats.
HAEG: Ok but you didn't answer the question of how the – the statement...
OSTERMAN: (sic)
HAEG: How the statement came to be?
OSTERMAN: (sic) I'm sorry. Say that again – you broke up.
HAEG: You did not explain how the statement – how I came to make the statements that you brought up?
OSTERMAN: The - the earlier statement about the tranquilizer thing?
HAEG: Yes.
OSTERMAN: (sic) to put your wife on tranquilizers and then for every tranquilizer she took there would be a bullet and then you stopped, and paused for a second, and smiled and said a legal bullet. And you said they'd be drilled against Chuck Robinson.
HAEG: So I smiled? I – I...

OSTERMAN: Also you (sic) a lot of anger towards Mr. Cole.
HAEG: Ok and do you have a recording of any of these statements? (40:34)
OSTERMAN: I don't know - you probably made one. You were very good about carrying recorders into the meetings.
HAEG: Correct and would you be willing, for the Court, to look at the transcripts of those –uh- statements where you say all this?
ROM: I would object to those transcripts being admitted.
WOODMANCY: We - we don't have the original tapes on it. Don't know if everyone has copies. I haven't had time to review those –um- again I'm - I'm not sure what point you're going to with these. It's – it's clear that so far that you have a –uh- incompatibility with your attorney. What is the benefit about hearing these tapes and reading these transcriptions?
HAEG: Well it goes to my credibility. –Uh- Mr. Osterman is saying that I'm going around making threats and I never did and I the have the tapes – original tape recordings with me. Mr. Osterman would allow me to play those for the Court at some point in the future when you have a hearing or however it may be or whether we could admit the transcriptions so that it can be proved what actually transpired.
WOODMANCY: I guess Mr. Osterman would you mind if the court listened to the original tapes of the meeting?
OSTERMAN: I – I do object at this particular point in time because it's obvious to me it isn't going to change my perception of your threatening actions or attitudes toward me or toward my staff or to other attorneys –uh- in the – that – that were handling your case or had handled your case. At one point in time Mr. Haeg you demanded to contact the staff attorney working for me. I told you no there would be no contact with him because you had become very vocal and very loud with me - then I discovered you had contacted that attorney at home –uh-

over the weekend after I had told you could not. I mean obviously you wouldn't take no for an answer and in my opinion it - it simply went further and further out of control.
HAEG: Ok.
WOODMANCY: Wait I –I'm goanna rule. We're not goanna listen to those tapes now –um- and if you want to present that you have expressed that you're goanna have a civil suit against Mr. Osterman that would be the venue for those tapes.
HAEG: Ok.
WOODMANCY: I think it's fairly clear that you folks are at odds. Lets - lets move on.
HAEG: Ok I would just like to rebut the – or question Mr. Osterman a little more to clear up the attack he's made on my credibility as to being threatening or dangerous and that's a very – very important (sic)...
HAEG: Ok. Could you – or did you... Do you remember responding, "Hunting what - hunting people or hunting bears? Taking away and depriving people of their livelihoods, is that what you enjoy? Are you so crass that that's what you believe? That's what you're asking me in essence to do is you're asking me to go on and interfere with another mans livelihood so I hesitate, I don't think it's the same as hunting a deer out in the woods." Do you remember making that statement Mr. Osterman?
OSTERMAN: I probably did and I think that it's quite out of context. I think it needs to be contextualized. You wanted me to pursue a malpractice claim against your former attorneys and I said I would not do that.
HAEG: Do you remember me asking you "what has all - all them attorneys that I showed you what did they – what did they – what have they been doing to me? They've been hunting me" - do you remember me making that statement?
OSTERMAN: I remember you making that statement but I don't think I agreed with you.

HAEG: Your correct. Do you remember saying, "No they have not been hunting you" – do you remember making that statement?
OSTERMAN: Aptly correct.
HAEG: Ok. Do you remember me saying...
OSTERMAN: Now my question is does it – where do you want to go with this though?
HAEG: Well I'm almost through. I just have – I have about 3 more questions on this report.
OSTERMAN: (exhales)
HAEG: Ok do you remember me saying, "Want to bet?"
OSTERMAN: I don't know.
HAEG: Ok. Could I have said that?
OSTERMAN: There – probably.
HAEG: Ok. Do you remember responding to that by saying, "By some act of negligence or carelessness they've, caused you harm and granted...
OSTERMAN: Right.
HAEG: ...and granted they should pay for the act of careless or negligence but those people are not out there with a gun trying to shoot you like you're trying to shoot them. As I said before..." and then I jump in – do you remember me jumping in and saying, "No they're only - they've only put so much pressure on me that for – on – on me that my wife takes tranquilizers and for every tranquilizer she takes I'll put a bullet in them not through the law but with the Law." Is that – do you – is that along your recollections there Mr. Osterman?
OSTERMAN: No it is very much but I think there's a pause there, a long pause with a bullet in each one of them and a long pause and then "with the law or through the law" was added. But it was clear to me that that particular point in time sir I believe that you were quite enraged.
HAEG: -Um- Mr. Osterman you understand what I've been through – if – if you went through what I've been through would you be enraged with my – with your former attorneys conduct?

OSTERMAN: I – I'm not goanna speculate on what you've been through or I've been through.
HAEG: That wasn't the question. I said with your knowledge...
WOODMANCY: He answered the question.
HAEG: ...of what – what I've been through would you be enraged with your – with – if you had the same context – con – if you had the same representation as my attorneys gave me, would you be enraged?
ROM: I'm goanna object to the question. It's calling for speculation and it's irrelevant.
WOODMANCY: Exactly.
HAEG: Ok.
WOODMANCY: Sustained. He – he's not in your situation - it would be a guess.
HAEG: Ok. Well he read my situation...
WOODMANCY: Next question.
HAEG: -Um- and so I cannot go into why I feel it's necessary to go on my own because you won't let me question him after he's relieved and gone? I would just like to – to – while he is on the record and sworn under oath go over some things that transpired in his representation of me.
WOODMANCY: Is this why you're discharging him?
HAEG: Yes.
WOODMANCY: Or is this...
HAEG: This is why I am discharging him...
WOODMANCY: ...a matter you're trying to get on record for future a civil issues?
HAEG: No I'm trying to – trying to inform the court or trying to let the court know if I am intelligently waiving my right to counsel.
WOODMANCY: That will come in the next part of the hearing. First we are goanna determine if he can withdrawal.
HAEG: Ok. Mr. Osterman in your representation of me did you ever say "tell me I cannot believe any defense

attorney in the world would do that and particularly any defense in the world would do that with Scot Leaders."
ROM: I object – there's not relevance to this.
HAEG: Can I ask questions that would help show Mr. Osterman's mindset?
ROM: (exhales) It's irrelevant.
HAEG: No it has everything – it has everything to do with whether he should be allowed to withdrawal because it will show that he has an immense conflict of interest in representing me. And every court – every court...
OSTERMAN: I'm assuming however that he no...
HAEG: ...in the world...
OSTERMAN: ...of my withdrawing...
HAEG: ...every court in the world...
WOODMANCY: Stop – stop here Mr. Haeg.
HAEG: Ok.
WOODMANCY: What did you say Mr. Osterman?
OSTERMAN: I said then it would seem Your Honor that he does not have an objection to my withdrawing.
WOODMANCY: Is – is that correct Mr. Haeg? You have no objection to Mr. Osterman withdrawing?
HAEG: I want to show the court...
WOODMANCY: Please answer my question, Mr. Haeg, and then we'll move on. Do you have any objection to Mr. Osterman withdrawing?
HAEG: I do until he helps me explain to the court why I'm going pro se.
ROM: May I interject on this?
WOODMANCY: You may.
ROM: Ok. It seems to me that what Mr. Haeg is trying to do is preserve –uh- an inquiry that would be made in the second portion of this which is whether –uh- this court should recommend to the Court of Appeals that he is competent to proceed pro se or not. I got that right?
HAEG: Correct so I guess...
ROM: Ok. Let me – let me keep going here. So and there's something about your relationship with your

attorney that you think would help explain why your competent to proceed pro se?
HAEG: Not competent because I know that I'll never be competent until I go to law school. Why I am intelligently doing so. Why I – why it is an intelligent decision for me to go on my own even though I know my own incompetence.
ROM: Ok. Have you had this discussion with Mr. Osterman?
HAEG: Yes we have.
CLERK: Your honor could you please identify the last speaker?
WOODMANCY: That's Roger Rom.
ROM: Yeah.
WOODMANCY: -Um- Roger Rom and Mr. Haeg. -Um- if – if you're in fact trying to reserve your right – preserve your right to bring Mr. Osterman into the pro se hearing – I guess...
HAEG: I thought they both...
WOODMANCY: ...I can understand that but under – understand that when is this goanna occur? Mr. Osterman needs to leave in 6 minutes. The – the late beginning of the – of the hearing was not fault of his, no fault of anyone but he has another commitment which is something that frequently happens in court you know people have conflicting schedules so he – I do not believe that he anticipated that - that this part of the hearing would go any length of time.
HAEG: And – and I understand it and it's partially my fault because the plane was broken – I – I understand that it's just – it is critical...
WOODMANCY: No it's not anyone's fault Mr. Haeg...
HAEG: Ok.
WOODMANCY: ...that a plane...
HAEG: Well I could have flown out here myself.
WOODMANCY: So Mr. Osterman – Mr. Osterman...
ROM: Would it be appropriate for Mr. Haeg simply just to ask Mr. Osterman – Mr. Osterman's view on Mr. Haeg –

Mr. Haeg's competency to represent himself in the Court of Appeals? Can we just get to the nut and deal with it?
HAEG: I don't think so because like you said I want to preserve my right to show why I must proceed, even though I'm not attorney and at the disadvantage, why that's an intelligent decision.
ROM: Ok you're goanna – this is Mr. Rom again. You're goanna get a chance to testify and tell anything you want about your confidence.
HAEG: And can I then bring in Mr. Osterman's statements at that time? See that's what it all goes down to.
WOODMANCY: Yeah I – I think you're confused. What do Mr. Osterman's statements have to do with your ability? Anyone can make any statement they want...
HAEG: I'm not talking about the ability. You're misunderstanding is there's two separate points to this determination. It's whether I competently can do so and whether I intelligently. Those are 2 entirely separate issues.
ROM: So they go – it goes to your state[ment], not mine, not Mr. Osterman's.
WOODMANCY: Exactly.
OSTERMAN: Your honor if I – if I could be heard?
HAEG: And...
WOODMANCY: Go ahead Mr. Osterman.
OSTERMAN: That you your honor. Mr. Osterman speaking here. I think part of what Mr. Haeg is trying to get to and can't really arti[culate] – can't put his finger on the articulation comes back to a fear that Mr. Haeg has that all of us attorney's have banded together and that therefore he cannot get fair representation. So under the circumstances he wants to establish or try to establish through me that there was collusion, -um- that –uh- people were trying to protect other attorneys – including and he – and he's goanna make the allegation that I did the same thing –uh- against him through other attorneys in the area

as well. So I – I think that's the point he's trying to make Your Honor.
WOODMANCY: Is that correct?
HAEG: That is correct.
WOODMANCY: And that has bearing on him being allowed to withdrawal. You want him to remain your attorney until this point rolled on or are you ready to discharge Mr. Osterman?
HAEG: See it – it – it had several different concepts why this was remanded by the Court of Appeals. It says whether I knowingly – which we all know that I knowingly do it...
WOODMANCY: Mr. Haeg trusts me...
HAEG: Ok.
WOODMANCY: ...I understand the decision I have to make...
HAEG: And competently that remains to be seen because I'm sure all of you don't think I'm competent to do this and I'm the first to agree. So it would be a big step for someone that is incompetent – it would be like I don't know if Mr. Rom flies a plane – let me just make an example. If he jumped in a plane and flew out of here without Trooper Gibbens at the wheel – if he did that by himself there's a pretty compelling reason he did so and that's what I'm trying to show is that it is an intelligent decision for me to forego my right to an attorney even though I understand completely the huge disadvantage. I've already had I don't know how many objections and Your Honor also tell me what I don't know what I'm doing. But in my mind that is an intelligent decision and the Court of Appeals has remanded this case for you to make a determination that it is intelligent also and that's a pretty big burden when somebody has the money to buy an attorney, such as I do, and they waive their right to an attorney, that is a fantastic thing in the history of the United States. To have someone with the money to purchase an attorney and waive that right and go on their own knowing that they're goanna

probably just take a liken doing it. But you know what I'm goanna make a statement here – I would rather go into battle with no allies if the allies I have are behind me stabbing me in the back.
WOODMANCY: Ok. I understand where you are at with this.
HAEG: Ok and Mr. Osterman...
WOODMANCY: I...
HAEG: ...statements to me show that brutally clearly brutally.
WOODMANCY: That you should be allowed to proceed pro se?
HAEG: No it shows – his statements brutally show the immense conflict of interest among a number of attorneys to protect what the first one did to me. And it's the most amazing thing I've ever seen in my life. I have read – I have read likely hundreds of thousands pages – cases – case – or pages of case law and I have yet to find one case as egregious as what happened to me.
ROM: All right. In the end –uh- in the final assessment did you determine that his lawyers –uh- had acted in his interest and at his direction?
OSTERMAN: Not necessarily I felt strongly that there was an ineffective assistance claim –uh- in – with at least regard one attorney and in fact I felt that it was a necessary issue to raise –uh- in the appellate level and that was a part of the discussion that I had with Mr. Haeg is to how to present that particular issue.
ROM: And did you explain to him that he could not bring – uh- ineffective assistance of counsel claim in a – on a direct appeal?
OSTERMAN: Well not necessarily I mean my reading of the post-conviction relief statute would indicate that there's –uh- an ability to bring it but I told him that it was the strategic issue that one of the issues that we had in this particular case dealt with a plea agreement and how that particular plea agreement got there –uh- and – and what

transpired of that particular plea agreement and that I felt that there was a violation of plea agreement issues and that I felt that ineffective assistance of counsel was a – if not directly at least a – a substantially tacit –uh- issue to be raised in that particular portion of the appeal.
ROM: All right thank you.
WOODMANCY: Ok Mr. Haeg you have 5 minutes.

(TAPE #2 Side A – 90 MINUTES)

HAEG: Ok Mr. Osterman did you ever tell me "I looked at this and it was a disaster in it and what Chuck did was wrong and what Cole did was wrong there's no two ways about it. Did you ever make that statement?
OSTERMAN: I probably did say that to you. I don't know when you're quoting it though. Unfortunately you know you have the advantage of having transcribed these tapes and gone through them. I don't have that advantage sir.
HAEG: Ok well be that as it may -um- do you remember that being said?
OSTERMAN: I more then likely said it. I don't know when I said it though – I would say – probably say is I probably said it early on in our – in our discussion.
HAEG: Ok. Do you ever remember me –uh- asking what about not st – or we were talking about Mr. Cole and you had said –uh- something to the effect about him not telling me my statements could be used against me at trial if I made them and I asked you "what about not sticking up for a rule 11 agreement – you told your client to give up a whole years of his income for and a 5 hour confession" – do you remember me making that statement?
OSTERMAN: Several times.
HAEG: Ok. Do you remember responding "I think that's – uh- real big malpractice issue but it is a – an ethics issue?" – Do remember responding that way?
OSTERMAN: I do.

HAEG: Ok then do you remember me saying, "he failed to act – to stand up for my deal" and then you responding "But then that's malpractice – it's not ineffective assistance. He may have seen some advantage. Who knows what the hell that advantage is. I'm arguing the devils advocate because I could tell you that 1 in a thousand ineffective assistance of counsel claims wins." Do you remember making that statement?
OSTERMAN: I do and you might also remember I brought you a case where I changed my tune with regard to some of that statement.
HAEG: Ok.
OSTERMAN: I sent you a case I believe out of New Jersey or New York or something where the I think it was one of the circuit Court of Appeals had said that –uh- that it was certainly an effect - ineffective assistance to fail to advise a client with regard to plea agreement.
HAEG: Yeah and I remember that. Do you also remember saying "but you can't" or I asked you – I – I – do you remember me asking you "but you can't – you cannot have a malpractice suit unless you're found innocent or not innocent or unless your conviction is overturned" -um- and I said "Chuck Robinson's wrong, ok? He obviously was the malpractice of one attorney that put you in this bind. Cole has a malpractice problem a big malpractice problem." Do you remember saying that?
OSTERMAN: Yeah but what's this got to do with anything, sir? What's this got to do with my ability to protect you?
HAEG: It – it has to do whether I am intelligent in going on my own. -Um- do you ever remember me – or - or you stating to me you stating to me "You gave the evidence to the District Attorney to use against you because of Cole's conduct." You ever remember saying that to me?
OSTERMAN: I may have said that to you sir. What's that got to do with my ability to withdrawal from this case or my recommendations about whether you are able to proceed pro se?

HAEG: It has nothing to do with that. It has to do whether it's an intelligent decision of mine to go pro se. Did you ever remember saying "we're goanna file a complaint for malpractice against Cole. You did not realize he was...
OSTERMAN: I...
HAEG: ... he was going to set it up so their dang dice was always loaded. They were always goanna win." Do you ever remember saying that to me Mr. Osterman?
OSTERMAN: I – I – I don't know that I said that or not, sir. Again it goes back to I don't know whether you're making an intelligent decision or not.
HAEG: Ok. Do you also remember you saying "He [and I think you meant Cole] committed the malpractice act which was selling the farm." Do you remember making that statement?
OSTERMAN: I do I thought that he'd given away an awful lot of information during a plea agreement.
HAEG: Ok. And you remember my concerns for that plea agreement in which I'd gave a 5 hour interview, gave up a whole year of my income – not receiving one single benefit for that sabotage of my life. Do you remember my concern about that?
OSTERMAN: I do.
HAEG: Is that why I've been so angry is because I gave the State their entire case in return for something and they plucked it away from me. Is that why I am upset?
OSTERMAN: I can't tell you why you're angry sir.
HAEG: Ok. Do you agree I have a reason...
OSTERMAN: Yes.
ROM: Can I get one minute?
HAEG: ...saying... No we get 5 each. You had your 5.
WOODMANCY: Mr. Haeg you don't rule on these things.
HAEG: Mr. Osterman do you remember stating to me " you're not happy with them and they've already screwed up your case bad enough." Do you remember saying that to me?

OSTERMAN: I – I don't remember you saying no.
HAEG: No you said it to me. Do you remember making that statement...
OSTERMAN: Oh.
HAEG: ...to me?
OSTERMAN: I don't – I don't have any recollections here.
HAEG: Ok could you have made that statement?
OSTERMAN: I – I very well could have.
HAEG: Ok. Do you remember...
WOODMANCY: I'm goanna give you each one more minute. Go Mr. Rom and then...
HAEG: Ok.
WOODMANCY: ...you can have a minute to redirect.
ROM: -Um- during these conversations with Mr. Haeg did you obtain – did you ever talk to -um- Brent Cole about the –uh- plea agreement?
OSTERMAN: No sir I've never spoken to Brent Cole about the plea agreement.
ROM: Did you talk to Scot...
OSTERMAN: What I did do is I went back to research the case.
ROM: And did you talk to Scot Leaders about the negotiations in the course of the –uh- plea agreement?
OSTERMAN: I don't know whether – and I never got a report. I personally did not and I don't know whether –uh- Mr. Rotherberg did from my office.
ROM: -Um-
OSTERMAN: I know that he made a phone call to -um- -um- Scot but I don't know that we ever got it returned.
ROM: And is fair to say that the information you go about the –uh- plea agreement and the negotiations came from Mr. Haeg?
OSTERMAN: Mr. Haeg, from the information contained in the file, and from information that –uh- was provided to us through the Robinson file.

ROM: Ok and –uh- are you aware that Mr. Haeg rejected the rule agreement that provided for 1 year license suspension?
OSTERMAN: -Um- I got to tell you that's one of the things that's very unclear in my review of the file. It appeared to me that Mr. Haeg had not committed one way or the other when an amended information was filed and the amended information contained information provided by Mr. Haeg – uh- as a result of rule 11 negotiations.
ROM: Right and are you aware that Mr. Haeg –uh- that that information was filed because Mr. Haeg insisted on going into open sentencing against his attorneys advice?
OSTERMAN: -Um- there was the issue of open sentencing but that was on a plea beyond the initial rule 11 agreement.
ROM: Correct and that...
OSTERMAN: The initial rule 11 agreement I had heard had been accepted and then Scot filed an amended information that alleged new material that was –uh- received out of the rule 11 negotiations.
ROM: And –uh- nobody ever informed you that the reason that happened is that Mr. Haeg insisted on going into open sentencing which could have given him a 5 year license suspension – exposure?
OSTERMAN: –Uh- again I – I look back I don't agree with that particular statement. My recollection of this particular file –uh- is that -um- Mr. Haeg -um- had agreed to take a - a – a plea agreement that was initially offered that upon accepting the plea agreement Mr. Leaders filed an amended information and the amended information included additional information and then suddenly the rule 11 agreement was – the (indecipherable) everything was turned off.
ROM: And you weren't aware that the second amended information had significantly higher penalties statutes attributed to it?

OSTERMAN: I – I do know that that was the case and that's one of the things that concerned me is that the first rule 11 agreement got - got the information that was used to be charged in the second amended information. It seemed to me that that was –uh- there were several severe problems there.
WOODMANCY: Mr. Haeg you have a minute.
HAEG: ...did – did –uh- Mr. Leaders when he filed the rule amended – or the – the amended information did he utilize all my statements to do so that were made in plea negotiations?
OSTERMAN: I don't know that he used all of them. I know that there was a – quit a few of them. –Uh- whether all were there or not I don't know for sure.
HAEG: If he did so is that a vio[lation] direct violation of evidence rule 410?
OSTERMAN: Well it's one of the issues that we were goanna raise on appeal is that there was clear – clearly an – an issue there too, yes.
HAEG: What is it called when Mr. Leaders used my statements made in plea negotiations to file charges not agreed during those plea negotiations – what's that called?
OSTERMAN: Well...
HAEG: Is it called...
OSTERMAN: ... –uh- from what angle?
HAEG: Is it called prosecutorial misconduct?
OSTERMAN: Would it be for his misconduct?
HAEG: Is it prosecutorial misconduct?
OSTERMAN: It could well be, yes.
HAEG: Is it ineffective assistance of counsel for Brent Cole to not jump up in my behalf and defend my rights and object to that?
OSTERMAN: Well I – you know again (laughs) I intended to use it as an issue on appeal. I wasn't there to bring any ethics charges against Brent Cole nor was I there to –uh- to –uh- -um- file any claims for malpractice but I felt that

there was some strong issues about Mr. Cole failure to protect your rights.
WOODMANCY: Last question.
HAEG: ...Mr. Rom has made it very clear or tried to because to me it's very unclear. Now you specifically tell the court here what the state of plea agreements were from one month before there was supposed to be completed to the time in which they would – they were broke off and who broke them off - because I told you many times and I showed you the evidence. Who broke the deal and how did they do it and when did they do it?
ROM: I'm goanna object to the question. This witness...
OSTERMAN: Well I – I ...
ROM: I'm goanna object to the question...
WOODMANCY: Whoa – whoa – whoa Mr. Osterman – Mr. Osterman hold on there's an objection. Go ahead Mr. Rom.
ROM: –Uh- this witness has no personal knowledge of that.
WOODMANCY: But...(indecipherable)
HAEG: He has seen the evidence. He had no personal...
WOODMANCY: Whoa – whoa...
HAEG: He has no personal knowledge of what his question was about all of the other stuff. He just had Mr. Osterman testify about all this stuff – of – that I'm the one that broke the rule agreement and Mr. Osterman got all that on. Well how does he have personal knowledge of that?
WOODMANCY: He was not a party -- he's asking – he asked if in his review of the case he was aware of these things.
HAEG: Ok. Can I ask if in the review of the case along did – can he tell us who – when the rule 11 agreement was made, when it was broke, and who broke it according to his research into the case?
WOODMANCY: I'll allow that question. Last – last answer Mr. Osterman and then you can go.
OSTERMAN: Ok thank you Your Honor. I can only tell the court that –uh- my research seemed to indicate that the

plea agreement was broken by -um- by Mr. Leaders when he filed an amended information with an open plea agreement –uh- with the party and that the – the plea agreement – I can't give the court any specific dates as I don't have that information directly in front of me.
WOODMANCY: Ok. Thank you very much Mr. Osterman. You are excused to go to your next appointment –uh- as matter of record your counsel has reserved the right to – or your - I'm sorry Mr. –uh- not your counsel but Mr. Haeg has reserved the right to –uh- call you back in other matters but –uh- for now you're done and thank you for attending sir you may hang up.
WOODMANCY: Ok come down this way Mr. Haeg and let Mrs. Haeg move this way a little – as close as she can get to the phone and we can move the phone down a little. Ok Mr. Haeg go ahead.
HAEG: Ok -um- should I call her Jackie or wife or Mrs. Haeg?
WOODMANCY: She's your wife you can call her whatever you want. I'll call her Mrs. Haeg.
HAEG: Ok -um- I've never called her Mrs. Haeg much. But ok Jackie did you transcribe all of the tapes that were here – or that we've ever made of everybody?
JACKIE HAEG: Yes.
HAEG: And did you do – do so accurately and would you swear under penalty of perjury that they are accurate – the transcriptions?
JACKIE HAEG: Yes I would.
HAEG: Ok -um- did we hire Mark Osterman?
JACKIE HAEG: Yes.
HAEG: Did he make it very clear how much money we were to pay him?
JACKIE HAEG: Yes he did.
HAEG: And what was – and was – what was that sum and was it for the entire appeal of my case?

JACKIE HAEG: It was 12,000 dollars and he did say it would be for the entire case. He felt it would be for the entire case.
HAEG: Ok and did he state how much each point of appeal would be?
JACKIE HAEG: Yes it was -um- it would be 3 to 5 thousand a point.
HAEG: And did he say how many points there may be?
JACKIE HAEG: He thought that there would be about 4.
HAEG: Ok. And –uh- did we – how do we pay Mr. Osterman?
JACKIE HAEG: Oh we gave him a – I believe it was a cashiers check for $12,000 dollars.
HAEG: Ok and then did Mr. Osterman subsequently bill us for more money?
JACKIE HAEG: Yes he did.
HAEG: And did he say why – then how much more?
JACKIE HAEG: Well he said it took more time then he thought and billed us I think it was another well - $6000 at the time and then he took – he was goanna take that off the bill and credit some of the time and what he had originally told us and ...
HAEG: Ok did – what is the total billing he had for us – excluding anything that he may have forgave?
JACKIE HAEG: I believe it's now $36,000 dollars.
HAEG: Ok did he finish our case like he had stated the original $12,000 would finish our case?
JACKIE HAEG: No.
HAEG: When he gave us that additional bill did he – was he the same price per point as he was when hired him?
JACKIE HAEG: No.
HAEG: How much additional per point?
JACKIE HAEG: -Um- well I would say somewhere about – well twice as much...
HAEG: Ok.
JACKIE HAEG: ...or more then twice.

HAEG: So to paraphrase it – we hired Mr. Osterman for one price for the completed case and he billed us for twice as much...
JACKIE HAEG: Yes.
HAEG: ...for not completing the case?
JACKIE HAEG: Yes.
HAEG: Ok. -Um- have we paid him the rest of the money?
JACKIE HAEG: No.
HAEG: As the money manager in our family do you think we should pay him the rest?
JACKIE HAEG: No he didn't do what he said he was going to do.
HAEG: And he didn't honor the agreement he made, correct?
JACKIE HAEG: Yes.
HAEG: -Um- what – did you attend or have you met Mr. Osterman?
JACKIE HAEG: Yes I have.
HAEG: Have you been involved in any discussions with him?
JACKIE HAEG: Yes I have.
HAEG: Ok when we first hired him what did he say - and this is something where it might be hearsay you know so you might just... What did he say about our ability or – what did he say the biggest thing was going to be that would help us in our appeal?
JACKIE HAEG: That ineffective assistance of counsel.
HAEG: Ok of who – of who?
JACKIE HAEG: Of -um- Brent Cole.
HAEG: Ok. Did he say anything about Chuck Robinson?
JACKIE HAEG: He said that Chuck Robinson could also be brought in on ineffective assistance of counsel.
HAEG: Ok and was he – did Mr. Osterman seem like it was a good chance, a little chance, or what – how did he describe the conduct of my first two attorneys?

JACKIE HAEG: Pretty much as outrageous, unbelievable, you know he couldn't believe what they had done – or had not done.
HAEG: Ok and did he feel that a lot of what they had done or had not done was attributable to the State prosecutor?
JACKIE HAEG: Yeah he did. He felt that Mr. Leaders had done quit a bit of things bad in your case.
HAEG: And that – and was my attorneys actions in – or inactions a result of what Mr. Leaders did?
JACKIE HAEG: In breaking the rule 11 agreement yes. They – they never stood up for it.
HAEG: Ok and what about the using my statements against me that I made in plea negotiations – did Mr. Leaders do that and did –uh- Mr. Osterman consider that a very significant act?
JACKIE HAEG: Yes. Mr. Leaders could do that and Mr. Osterman said that he could not believe that.
HAEG: Ok did I ask Mr. Osterman if he had any compunction whatsoever for using the acts of my first two attorneys to help me?
JACKIE HAEG: Yes you did ask him that.
HAEG: Ok. So how did – what did – what frame of mind did Mr. Osterman try to put me into – or what – what was his –uh- outlook on the ability of us – of him to successfully reverse my conviction?
ROM: Objection.
WOODMANCY: Sustained. Your asking your wife what he was thinking.
HAEG: Ok. Ok and ok -um- was Mr. Osterman optimistic?
JACKIE HAEG: Yes he was – very.
HAEG: Ok and did that optimism or did it – you had stated earlier that he said he was willing to use the actions of my first two attorneys to help me – is that correct?
JACKIE HAEG: Yes (indecipherable).
HAEG: Ok did that change at some point?
JACKIE HAEG: Yes it changed.

HAEG: Ok and can you explain to the court how that changed?
JACKIE HAEG: Well he told – he said that he didn't want to go after two attorneys lives and livelihoods and that he was not goanna follow through on the ineffective assistance of counsel claim like he had originally told he was goanna do.
HAEG: Ok. Do you think Mr. – do you think our money was buying Mr. Osterman's loyalty?
JACKIE HAEG: No.
HAEG: Why not?
JACKIE HAEG: Because he didn't follow through on what he said he was goanna do for that money and the...
HAEG: -Um- why don't you think Mr. Osterman should be allowed to continue as our attorney?
JACKIE HAEG: Because is not doing or did not do what he said that he would do and I don't feel he will do what he said he that he would do – I mean...
HAEG: Ok and what did he say he was goanna do?
JACKIE HAEG: He was goanna file an ineffective assistance of counsel claim against Brent Cole and Chuck Robinson and he was goanna list everything that they had done and he did not do that.
HAEG: Ok did Mr. Osterman have any concerns about Mr. Leaders actions?
JACKIE HAEG: Yeah he felt the he – he worded it – he said that "Scot stomped on your head with boots" is what he said in one of the conversations he felt that or Mr. Leaders I'm sorry – that he did not treat you fairly – like he's supposed to.
HAEG: Ok. Did he have any concerns of violations of my rights?
JACKIE HAEG: Yes he did.
HAEG: Ok did he utilize any of these concerns in his draft brief that we looked at?
JACKIE HAEG: No he did not.

HAEG: Would that lead you that – lead you to believe in your opinion that he was not representing us?
JACKIE HAEG: Yes.
HAEG: -Um- and this may – you know I don't know. -Um- how many attorneys have we talked to personally or talked to you know – actually talked to – to represent us?
JACKIE HAEG: I don't know the total – I would say that it's at 20 different attorneys if not more.
HAEG: Ok and what's been the general consensus of those attorneys? I mean – have – have any of those additional 20 –uh- agreed to represent us?
JACKIE HAEG: No.
HAEG: And what is the common refrain that we hear from them when they refuse to represent us?
JACKIE HAEG: Well they don't want to go after another attorney with an ineffective assistance of counsel claim.
HAEG: Ok. Would you say that we've just about exhausted all legal options to find an attorney?
JACKIE HAEG: I would say so, yes.
HAEG: Have we checked in Washington state, Oregon, Minnesota, New York also for attorneys?
JACKIE HAEG: Yes we have.
HAEG: Have we found one?
JACKIE HAEG: No we haven't.
HAEG: Did Mr. Osterman appear to do anything that would actually help us in our appeal?
JACKIE HAEG: No he did not.
HAEG: Did what Mr. Osterman do essentially copy and this might be leading I don't know – copy what Mr. Robinson had done already?
JACKIE HAEG: It looked that, yes.
HAEG: When we first hired Mr. Osterman what did he say about Mr. Robinson's appeal points?
JACKIE HAEG: He said that he did not agree with them.
HAEG: Did he think they would work?
JACKIE HAEG: He did not think they would work.
HAEG: Did he think there was anything better to go with?

JACKIE HAEG: Yes he did.
HAEG: And were those the things that we've already talked about?
JACKIE HAEG: Yes they are. The ineffective assistance of counsel...
HAEG: Ok.
JACKIE HAEG: ... and prosecutorial misconduct, and I think that's all that we've talked about here now.
HAEG: Ok and did I ever dis – or did we ever discuss the actions of the troopers in my case?
JACKIE HAEG: Yes we have.
HAEG: And what did Mr. Osterman think of those actions?
JACKIE HAEG: He agreed with you he – he felt that –uh- they were not right either.
HAEG: Ok was any of that in the draft brief that Mr. Osterman –uh- gave us?
JACKIE HAEG: No it wasn't.
HAEG: Did Mr. Osterman express any concerns about Magistrate and then Judge Murphy in my case?
JACKIE HAEG: Yes he did.
HAEG: And were any of those concerns – did – I guess – were any of those concerns something that would have a – an – an affect on my case?
JACKIE HAEG: It could have yes.
HAEG: Were any of those concerns in the draft brief Mr. Osterman gave us?
JACKIE HAEG: No they weren't.
HAEG: All right. -Um- –uh- actually I think that's about it for this aspect.
WOODMANCY: For this witness?
HAEG: Yeah for this question for this witness.
WOODMANCY: Ok and then you're saying you want to call her when you get to your pro se. Ok that's fine. (Indecipherable) Mr. Rom.
ROM: Do you think you're husband is guilty of the charges that went to trial on?
JACKIE HAEG: No.

ROM: Ok. Even if he says he is?
JACKIE HAEG: No I don't think he is guilty of the charges he went trial on.
ROM: All right -um- what was the nature of the letters that your husband was writing in that period of time that Mark Ost[erman] – from say March on – February March on?
JACKIE HAEG: –Uh- regarding what the troopers had done and I think that was pretty much the only letters. It was about the troopers.
ROM: And who did he write to?
JACKIE HAEG: The Department of Law, -um- the Governor, the Lieutenant Governor, -um- the Ombudsman, you I believe, -um- and I don't know who else. Can't think of any others.
ROM: Had he filed complaints against various people?
JACKIE HAEG: Yes.
ROM: And -um- he did that on his own – not through his attorney?
JACKIE HAEG: Yes.
ROM: Ok. Who did he file complaints against?
JACKIE HAEG: -Um- Trooper Gibbens, Trooper Doerr, and -um- Magistrate Murphy or Judge Magistrate Murphy.
ROM: And this is while he had an appeal pending?
JACKIE HAEG: Yes.
ROM: You testified that Mr. Osterman said that he disagreed with Chuck Robinson's points on appeal. Did Mr. Osterman amend those statement of points on appeal?
JACKIE HAEG: I don't believe he did.
ROM: Ok. Did your husband?
JACKIE HAEG: After he fired Osterman or felt that he wanted to go pro se.
ROM: Your testimony is that you talked to at least 20 attorneys to get representation on this case?
JACKIE HAEG: We talked to a lot of attorneys, yes.
ROM: And all of the refused to represent your husband?
JACKIE HAEG: Yes.

ROM: Did any of them indicate that they just didn't want to deal with him?
JACKIE HAEG: No.
ROM: Did any of them indicate that they didn't want to be sued by him after they undertook representation of him?
JACKIE HAEG: No.
ROM: Ok. That's all I have, thank you.
HAEG: Ok. In your opinion have what I've been doing – have – have what I've done been more affective then what my attorneys have done?
JACKIE HAEG: Yes.
HAEG: Ok and why would you say that?
JACKIE HAEG: Because you've – you've found out the reason for what we've been going through -um- with the ineffective assistance of counsel.
HAEG: Ok -um- do you think if we would have let the attorneys go forward it would have been in our best interest?
JACKIE HAEG: No I don't.
HAEG: Ok -um- what is the status of the complaint against magis – or Judge Murphy?
JACKIE HAEG: They are investigating -um- they have – they're goanna be calling witnesses on her and they've -um- they've started a case.
HAEG: Have they called any witnesses that you know of yet?
JACKIE HAEG: yes.
HAEG: Ok -um- have you seen the correspondence between or that they've sent us?
WOODMANCY: I have a question. Who is they?
HAEG: Oh the – the Council on Judicial Conduct – the Alaska Council of Judicial Conduct.
WOODMANCY: Ok thank you.
HAEG: Have you seen the – the correspondence the Council of Alaska – the Alaska Council on Judicial Conduct has sent us?
JACKIE HAEG: Yes I have.

HAEG: Did that –uh- indicate that they have serious concerns of magistrate or Judge Murphy's conduct?
JACKIE HAEG: Yes it did.
HAEG: Ok -um- did all the lawyers like appreciate and a – my research?
JACKIE HAEG: Yeah.
HAEG: How many of them said it would save them time?
JACKIE HAEG: I know that Chuck Robinson said it and Mark Osterman said it.
HAEG: Ok. Did Mr. Cole ever say that –uh- my investigation into the Wolf Control Program saved him time and money?
JACKIE HAEG: Yes he did.
HAEG: Ok -um- did Mr. Osterman specifically look at my research, like it, and said it would keep his costs down?
JACKIE HAEG: Yes he did say that.
HAEG: -Um- and I don't know if you can answer this but – uh- in the billings did it appear like Mr. Osterman did any investigation? Or how much investigation seem to do according to his billings?
JACKIE HAEG: What I saw of the billings it didn't seem like Mr. Osterman did that much investigation at all.
HAEG: Ok did it – did - the information that he put in our brief did it seem like he utilized either Chuck Robinson's investigation or my own?
JACKIE HAEG: It looked like he utilized Chuck's or Mr. Robinson's.
HAEG: Ok and so the information that he liked, agreed he wanted, and was I don't know might have said something like "on point" was that – that wasn't used in the brief though – even though he said he was going to use it?
JACKIE HAEG: Correct.
HAEG: -Um- did –uh- Mr. Rom ask about our business attorney?
JACKIE HAEG: Yes he did.
HAEG: What is our business attorney's name?
JACKIE HAEG: Dale Dolifka.

HAEG: Because of Mr. Rom's questions would you – would that lead you to believe that he was trying to represent to the court that Dale Dolifka has been giving us advise?
ROM: Objection calls for speculation.
WOODMANCY: Sustained.
HAEG: Ok. Why do you think Mr. Rom asked about Dale Dolifka?
ROM: Objection calls for speculation and it's irrelevant.
WOODMANCY: Sustained.
HAEG: Ok can I ask you why you asked about Dale Dolifka?
ROM: No you can't.
WOODMANCY: No (laughs)...
HAEG: -Um- have we talked to our business attorney about my case?
JACKIE HAEG: Yes we have.
HAEG: And what has he said about my case and our representation?
ROM: Objection calls for hearsay.
WOODMANCY: That is sustained.
HAEG: Ok. -Um- what has Mr. Ost – Mr. Dolifka indicated about my representation?
ROM: Objection calls for hearsay.
HAEG: Ok is there anyway to get around – to...
WOODMANCY: Well I'm – I'm not goanna help you present your case.
HAEG: Ok.
WOODMANCY: I'm not – I'm not sure where you're going with this.
HAEG: Ok well I just...
WOODMANCY: To (indecipherable) to let Mr. Osterman go the court is not really interested as to what Dolifka thinks about this subject.
HAEG: Ok well...
WOODMANCY: He's not a party here.
HAEG: I guess I'm unclear why he was brought up at all then? I – I guess what I'm getting at is Mr. Rom brought

him up – why can't I expound upon that? Isn't that cross direct?
WOODMANCY: Why didn't you object to him bringing him up?
HAEG: I didn't know I could.
WOODMANCY: Well if you object – I'm not goanna stop Mr. Rom from doing anything – the same as I don't stop you until he objects.
HAEG: Ok well I guess...
WOODMANCY: I mean I...
HAEG: ...I'd just – I'd like the court – I'd like to point out on the record that I'm at a severe disadvantage here. Ok.
WOODMANCY: That's the whole point – a pro se issue.
HAEG: Exactly. Did Mr. Rom ask about my mental health?
JACKIE HAEG: Yes he did.
HAEG: -Um- would you say my mental health is better now then earlier?
JACKIE HAEG: Yes I would say that.
HAEG: How much better?
JACKIE HAEG: A lot better.
HAEG: Ok. And why – what would you attribute that to?
JACKIE HAEG: I think because you finally figured out what your attorneys had been doing to you. And...
HAEG: And what was that?
JACKIE HAEG: Well the ineffective assistance of counsel, and not standing up for the rule 11 agreement, -um- not – I mean there's so many things that they did -um- with Robinson not standing up and going ineffective assistance against Brent Cole for not standing up for that rule 11 agreement...
HAEG: Anything about using my testimony against me?
JACKIE HAEG: That too yes.
HAEG: Ok did Mr. Osterman refer to – refer to what happened as "my own attorneys selling me out to the State"?
ROM: Objection – leading.

HAEG: I thought you're allowed to lead on cross – is what you said earlier?
WOODMANCY: I'll – I'll allow this question. Go ahead Mrs. Haeg.
JACKIE HAEG: Yes.
WOODMANCY: Thank you.
HAEG: -Um- are you still taking tranquilizers?
JACKIE HAEG: No.
HAEG: Why not?
JACKIE HAEG: Because I don't feel like I need to.
HAEG: And why might you feel like that?
JACKIE HAEG: Because we've finally figured out what's been going on.
HAEG: And are you – how sure are you that we figured out what's been going on?
JACKIE HAEG: Very sure...
HAEG: Ok.
JACKIE HAEG: ... positive.
HAEG: Positive ok. Have you taken tranquilizers before this entire ordeal happened?
JACKIE HAEG: No I've never taken tranquilizers before this.
HAEG: I guess that's it.
WOODMANCY: Mr. Rom?
ROM: Your husband truthful?
JACKIE HAEG: Yes.
ROM: So when he says he's not competent to do this hearing do you think that's a truthful statement?
JACKIE HAEG: Well I think that he realizes he's at a disadvantage.
ROM: Ok. He said he's at a significant disadvantage. Do you agree with that?
JACKIE HAEG: No I don't.
ROM: Ok. And your testimony is that he's more effective then his attorneys.
JACKIE HAEG: Yes.

ROM: If you were to learn that you cannot file a claim for ineffective assistance of counsel in the Court of Appeals on direct appeal would that change your mind that he's more effective then the attorneys?
JACKIE HAEG: No.
ROM: Ok. Thank you.
WOODMANCY: Ok Mrs. Haeg you're excused -um- I mean we don't have a jury[box] – or a witness box here but you're excused as a witness. –Uh- who's your next witness Mr. Haeg? And lets have the phone back up here please.
HAEG: -Um- I'd like to have a number of witnesses but I'd say I'm at a disadvantage – don't know how to do that. I guess I'd like to call Mr. Brett Gibbens.
ROM: I have an objection to calling –uh- Trooper Gibbens.
WOODMANCY: Based on?
ROM: There – there's nothing that I can imagine that Trooper Gibbens can shed on the relationship between Mr. Osterman and Mr. Haeg. I don't think Trooper Gibbens has been involved the attorney client relationship that –uh- Mr. Haeg has had with Mr. Osterman and probably didn't even know who Mr. Osterman was until today.
WOODMANCY: Now keeping this in mind that we're here to determine if Mr. Osterman...
HAEG: Yep exactly...
WOODMANCY: ...is allowed to withdrawal...
HAEG: ...yep...
WOODMANCY: ...or be discharged. What is – what is your thought that Mr. Gibbens is goanna know - Trooper Gibbens is goanna know in this arena?
HAEG: I had talked to Mr. Osterman about Trooper Gibbens actions in my case. I was very – very concerned about them and I actually asked Mr. Osterman to look into those allegations and I want to know if Mr. Osterman ever interviewed Mr. Gibbens about my concerns of felony perjury.
ROM: That would have been an appropriate question to ask Mr. Osterman I think.

WOODMANCY: Exactly.
HAEG: Well why can't I ask Mr. Gibbens if he's been contacted? What's wrong with that?
WOODMANCY: I'll take – I'll allow that one question.
HAEG: Ok.
WOODMANCY: That's where it will end. If you've been contacted or not – because what transpired before Mr. Osterman (indecipherable)...
HAEG: Ok.
WOODMANCY: But it is a question that would've been appropriate for Mr. Osterman...
HAEG: And...
WOODMANCY: ...I'm giving you a lot of leeway here. Madame clerk I'm goanna swear Trooper Gibbens in. It will be for this one question Mr. Haeg.
HAEG: Ok.
WOODMANCY: Then Mr. Rom will have one bite at cross and that will be it. –Uh- Trooper Gibbens would you please stand and raise your right hand since we don't have a witness box. Do you solemnly swear or affirm that you – that the testimony you will give in this case now before the court will be the truth the whole truth and nothing but the truth?
GIBBENS: Yes Your Honor I do.
WOODMANCY: Please state your name and spell it for the record.
GIBBENS: Brett S. Gibbens – B R E T T middle initial S for Scott – S C O T T - last name Gibbens – G I B B E N S.
HAEG: Ok. Mr. Gibbens did a Mr. Osterman contact you about my concerns of your perjury while under oath, perjury on search warrant affidavits, testimony for my interview/confe – 5 hour confession of you stating the perjury on the search warrant affidavits and then the subsequent perjury while you were under oath...
ROM: Objection.
HAEG: ...during my trial?
ROM: Objection.

HAEG: Ok.
WOODMANCY: Exactly – you're – you're reading all these things in record like they're fact.
HAEG: Ok.
WOODMANCY: They are not fact.
HAEG: Ok.
WOODMANCY: Your question is did Mr. Osterman call Troop - Trooper Gibbens.
HAEG: Ok. Did...
WOODMANCY: That's the question I'm goanna allow.
HAEG: Ok.
WOODMANCY: Trooper Gibbens answer that question...
HAEG: And he might not have called him. Did – did mark Osterman ever contact you in any way?
GIBBENS: Nope.
HAEG: Ok.
WOODMANCY: Do you have any questions for Mr. Gibbens?
ROM: No.
WOODMANCY: Mr. Gibbens you are excused as a witness. Now next witness.
HAEG: Can I be my own witness? Can I call myself?
WOODMANCY: You want to ask yourself questions or are you saying you want to make a statement?
HAEG: I want to be – I want to be sworn under oath. Like any other witness and just go for it. And I must say at the Alaska Bar Association they allowed me to do so.
WOODMANCY: That is an informal process. Here's what I will allow. I will allow you closing argument within reason.
HAEG: And my I be sworn under oath while doing so?
ROM: I would ask that he be sworn and I be allowed to cross-examine any statement he makes –uh- if it's under oath I want to be able to cross-examine him fully.
WOODMANCY: Well I don't want to do it at close them.
HAEG: I have no idea.
WOODMANCY: Ok I'm goanna swear –uh- Mr. David Haeg. Mr. Haeg please stand raise your right hand. Do you

solemnly swear or affirm that the testimony you will give in the case now before this court will be the truth whole truth and nothing but the truth?
HAEG: I do.
WOODMANCY: Please state sir your name for the record.
HAEG: My name is David Scott Haeg. –Uh- do I have to spell the whole name?
WOODMANCY: You can spell your last name.
HAEG: Last name H A E G.
WOODMANCY: Ok Mr. Haeg limited amount of time but go ahead. (39:58)
HAEG: Ok -um- I hired Mark Osterman after extremely serious doubts about my former attorneys. I showed Mr. Osterman my evidence that I'd compiled. Mr. Osterman was in awe of what had happened - said it was – paraphrase it – "the biggest sellout that he'd ever seen" and he thought that when the Court of Appeals seen it my conviction would be reversed. He also said that the prosecutor "stomped on my head with boots" and at the same time my own attorneys allowed them – allowed him to commit those acts without doing anything. –Uh- Mr. Osterman also said numerous times that what they did was unbelievable, unacceptable, and that he had just never seen anything like it. And I have –uh- tapes of him stating these things over and over again. I point blank ask Mr. Osterman that – did he have any compunction against using what my former attorneys did to help me out of the nightmare that I was in and he said "no". He said he didn't like doing it but he didn't like washing or doing toilets and whatever. About a month and a half later – well let me like – let me just back up a second here. Mr. Osterman said that I couldn't bother him for about a month because he'd be compiling everything, utilizing my arguments as the basis for his appeal. He agreed that Chuck Robinson's basis's were without merit and that he would be forming an appeal that centered around the issues that I had brought to him along with the tons of caselaw – literally tons –

supporting my arguments. About a month – month and a half later I hadn't hear from him. He kept kind of shifting. I'd call wonder what's going on. He would not let me talk to the people writing the brief. Along with himself he had somebody along with himself working on it. He wouldn't let me see what they had done. He essentially shut me out for a month and a half. I finally said, "I have to see what's went on in a month and a half". And he let me go in, I looked at the brief. The brief had all of the points that Chuck Robinson had and one point of ineffective assistance of counsel that brought up a point so tiny that it was nonexistent and the way he worded it - it would have been immediately thrown out of the Court of Appeals. I pointed this out to him and he said "when you have such a – a valid point why would you want to have it cumulative – why would you want the ineffective assistance cumulative?" He told me that they lying of my own attorneys that I had showed him proof of "didn't matter" in my ineffective assistance of counsel. Yet by very definition when your attorney lies to you – you are getting ineffective assistance of counsel. Mark Osterman said, "We don't need that – that's bad." He actually told me that if we attacked my attorneys the Court of Appeals would "throw" my case out. He said if we show just how bad my representation was they would throw my case out. And I thought about that and I thought about it and I thought about it and I did get somewhat upset because I had given that man a lot of money - $12,000 dollars in a cashiers check to be exact – and he said he was goanna write a brief that I wanted and he agreed that it was the proper brief. And when I received the brief it had none of that in it and I asked him why. And he says, "I cannot..." and this isn't the exact quote but it is very close "What you're asking me to do by doing that will affect the lives and livelihoods of your former attorneys" and that's what he testified here earlier as having said. Now you're guaranteed many things by the United States Constitution – one of them in the actual amendments itself

says you are guaranteed [e] assistance of counsel. And the U.S. Supreme Court has held over and over and over and over again in Strickland versus Washington, Cronic, Cuyler, and in Alaska Risher that when you are guaranteed assistance of counsel it will be effective assistance of counsel or it is no counsel at all and when you can prove that there in anyway there's a conflict of interest you are not getting effective assistance of counsel because your counsels loyalty is divided and you cannot ever know what your attorney would have done for you when he has - differently when he has a conflict of interest. Because you cannot look into his mind and say he was advocating for you here and there he wasn't. They say that when you can prove a conflict of interest you do not have to prove prejudice because the likelihood of prejudice is so overwhelming that you do not have to prove it. Well whose loyalties did I have when Mr. Osterman after telling me all of the bad things my attorneys did refuse to put it into my brief and told me he couldn't do so because it would "affect the lives and livelihoods" of my attorneys? I hired someone to look out for my life and livelihood and if someone else's actions when I hired them to represent me and they did it so badly that I got placed in a horrible hole and it was their conduct but the only way for me to be leveraged out of my hole to justice and a fair trial is to affect their lives and livelihood so be it. It isn't my responsibility to accept the damage of my attorneys who committed such horrible things against me. They have to take – be responsible for what they did against me. And Mark Osterman said he was not willing to show what my attorneys did that robbed me of my right to a fair trial – he was not willing to show the court that and that is one of the most egregious things that has ever happened in the history of the United States. I would just like to read to the record the one case that I feel typifies my representation.

WOODMANCY: How long is this goanna be?

HAEG: It's just that much.

ROM: I'm – I'm goanna object. Take a citation and we can all read it.
WOODMANCY: Exactly.
HAEG: Ok. United States v. Marshank 777 F. Supp. 1507 N.D. Cal. 1991 and the case deals with your own attorneys collaborating with the State prosecution to rob a defendant of any hope of getting a fair trial and it – it states that when a prosecutor takes advantage of a defendant's own attorneys conflicts of interest that justice is not served and that attorney – that –uh- DA is not allowed to use the – the information gained because of that. Yet that's exactly what happened to me. Mr. Cole did so many bad things in my case that it is – it's – it's stunning. He told me that the perjury on the search warrant affidavits...
WOODMANCY: Hold up here...We're – we're way off track. We're not trying Mr. Cole today there' no – he's not here...
HAEG: Ok. Well I guess what I'm getting at is – I laid all this out to Mr. Osterman and he agree it was the biggest sellout that he had ever seen and then after he had my money, had me right up to the point of time at which my brief was very close to be due – done – or due, said that he could not use any of the information that my former attorneys had essentially sold me out. Couldn't use any of it in my brief and that was what would have been my entire brief so the brief that he presented I went over it with him and showed him how it was what they call frivolous issues and would do nothing. And I asked him about all the stuff that would work and he said oh you know we can't use that because it will affect the lives and livelihoods of your former attorneys so that is why this court must demand – I mean it must flat demand Mr. Osterman be taken away because it's according the constitution and the U.S. Supreme Court you cannot have an attorney representing you that has a conflict of interest and I have him on tape telling me over and over he is unwilling to use law to help me. It's his duty to do everything he can to help me and if it means showing that my former attorneys sold me out so

be it and that's –uh- I guess where I'm at with Mr. Osterman. And I'm done testifying.
WOODMANCY: Mr. Rom.
ROM: Did Mr. Osterman tell you the difference between – uh- cases that are binding on Alaska courts and binding on federal courts?
HAEG: I don't believe he went over any of that with me, no.
ROM: U.S. v. Marshank is a federal case, correct?
HAEG: Correct.
ROM: And do you think that that has any binding affects on the courts in Alaska?
HAEG: You know which circuit court it is, sir?
ROM: Good question for you?
HAEG: I thought it was the 9th circuit and if it is it would have binding precedent. I think it is 9th circuit.
ROM: Do you know that F. supp – F. Supp stands for a reporter for district court cases?
HAEG: I didn't know that no.
ROM: You were aware that ND California is the northern district of California?
HAEG: Nope but isn't California the 9th circuit court as is Alaska?
WOODMANCY: Mr. Haeg – I'm sorry you don't get to ask questions...
HAEG: Ok.
WOODMANCY: ...you're – you're the witness now.
HAEG: Ok.
ROM: Would you criticized Mr. Osterman for not wanting to use US v. Marshank –uh- because it doesn't have any presidential value in Alaska?
HAEG: Yes I would chastise Mr. Osterman because in cases when it is the – in cases where there's no what they call proven ground or cases that have been dealt with you're allowed to look to any district to get advice.
ROM: Are you familiar with Berry v. State?
HAEG: No I'm not.

ROM: Berry v. State says you can't raise and ineffective claim in your direct appeal. Are you aware of that?
HAEG: Nope. I've – I've read where most times you're not allowed to but it says that what I've read says that you can raise it in direct appeal but most times the record is not well enough preserved or most of the times the record is not complete enough to do so and often times –uh- what does it say? It's most or a lot of times not complete enough to do so and the biggest concern is if you bring in ineffective assistance of counsel into the Court of Appeals they won't be able to make a determination. They'd have to remand it for to perfect the record because what they say is the record is rarely perfected for an ineffective assistance of counsel because most often or a lot of times what is the ineffectiveness is not on the record – it has to be discovered through evidentiary hearings, sworn testimonies and placed on the record so that if and then – when it gets to the Court of Appeals they can look at it. But in my case my appeal was filed before I understood what was going on. So my appeal had already started when I figured out what was going on and brought this up to Mr. Osterman and he said we can bring it up there and if the record needs to be –uh- you know he didn't even really say anything about what would happen. But you know I guess I'm testifying here whatever but what Mr. Robinson said is it can be brought up in either the Court of Appeals or in Post Conviction Relief Procedure in the district court. It – what determines that is whether there's enough information on the record to go forward to the Court of Appeals or whether the record needs to be perfected so that there's enough information to go forward and that is a determination that no one can really make until it's looked at.
ROM: And did you discuss this with Mr. Osterman?
HAEG: No I did not I learned this after Mr. Osterman said that he was not going to utilize what happened. See I thought when Mr. Osterman was representing me and in

fact until quit recently I thought everything had to go forward to the Court of Appeals. Because I'm ignorant.
ROM: When did you learn that –uh- you couldn't raise ineffective assistance of counsel in your case?
HAEG: I've never learned that.
ROM: Well you just testified that you did learn that.
HAEG: I've learned that in most cases it's better to bring it up but in some cases it must go forward.
ROM: Ok when did you learn that information?
HAEG: I don't remember.
ROM: Approximately?
HAEG: I don't remember.
ROM: Have you talked to Mr. Osterman in an attorney client capacity since you've learned of that information?
HAEG: No when Mr. Osterman said he was going to place my other attorneys interests above mine...
ROM: The answers...
HAEG: ...that was when...
ROM: Ok so the answer's no?
HAEG: Huh?
ROM: The answers no?
HAEG: I don't know. What was the question again?
ROM: Let's try to focus on the question answer.
HAEG: Ok.
ROM: You don't have a conflict with Mr. Osterman over this ineffective claim – ineffective assistance claim that you want to make on appeal, right?
HAEG: See I don't...
ROM: Yes or no.
HAEG: Yes I do.
ROM: Ok.
HAEG: Can I say why?
ROM: No. Did you tape record conversations with Mr. Osterman?
HAEG: Yes.
ROM: -Um- all of them?
HAEG: Yes.

ROM: From the very beginning?
HAEG: I believe so.
ROM: And did you do it in person? Person to person conversations.
HAEG: –Uh- person to person and via telephone.
ROM: Ok and did you do this with his permission?
HAEG: No I did not.
ROM: Did you do it with his knowledge?
HAEG: I did some of it with his permission and knowledge and some of it no. Not without his permission and not without his knowledge.
ROM: Did you tape record your other attorneys?
HAEG: -Um- yes I did.
ROM: Without their knowledge?
HAEG: Sometimes yes – sometimes no.
ROM: You talked about the Strickland and Risher test. Do you know what the Risher test is?
HAEG: Yes.
ROM: What is it?
HAEG: It is the test to determine whether you have a valid ineffective assistance of counsel claim.
ROM: What conflict of interest did Osterman have?
HAEG: He told me, in no uncertain words, that by putting stuff in what my former attorneys did would affect their lives and livelihoods.
ROM: Why is that a conflict of interest?
HAEG: Because when I paid him his loyalty is to me and me alone.
ROM: If Mr. Osterman felt that that was retaliation – in your retaliation against your former lawyers would you fault him for not wanting to do it? Yes or no.
HAEG: Yes I would fault him. Yes.
ROM: And because you were paying him you expect him to do things that he might seem – see as improper for him to do as an attorney?
HAEG: Run that by me again.

ROM: In your view, because you are paying him, you want him to do things even if he sees them as maybe improper for him to do as a lawyer?
HAEG: I feel Mr. Osterman you should do everything legally – he legally can to help me.
ROM: And it was you assessment of what he could do and what he could not do legally – not his assessment.
HAEG: No it was his assessment.
ROM: Ok. There are things you asked him to do that he may not have agreed with.
HAEG: He agreed with them. Yes he agreed with them.
ROM: Ok. He said he would do it. He would gladly go after these guys and retaliate against them?
HAEG: He never said anything about retaliate. Can he start putting words in my mouth? Retaliate.
ROM: You can say yes or no.
JACKIE HAEG: Objection.
HAEG: Objection.
ROM: Of?
HAEG: Putting words in my mouth.
WOODMANCY: He asked you a question. He didn't put any words – say no.
HAEG: No. I don't know. I don't even know what the – what I answered there. There was nothing about anything about retaliation anywhere in here. That's my objection. Relevance I guess.
ROM: Well what did you admit to when you testified to at trial? What is it you admit you did?
HAEG: I admitted that there was an enormous problem with State wildlife management and because of my eagerness to help I may have – because I'm human may have made a mistake and may have went outside the area and in fact I did go outside the area but I testified to Mr. Gibbens and Mr. –uh- Leaders in 5 hours interview and Mr. Gibbens can back me up me on this that I had nothing but the best intentions for everything that happened.
ROM: All right – all right...

HAEG: And that was all twisted against me and made it to seem something else through a lot of perjury, false information, -um- it was twisted so bad by my own attorneys and by the State's attorneys and by the Troopers it turned into something that – that bore no resemblance to what the crime was.
ROM: What I want to know is what did you testify to when you were on the stand under oath – David Haeg ...
HAEG: Yeah.
ROM: ...getting up there...
HAEG: Yep.
ROM: ...saying I shot wolves from an airplane with Tony Zellers...
HAEG: Yep.
ROM: You said that, right?
HAEG: Well I didn't shoot them – no I didn't say that. I flew the plane, yeah.
ROM: Ok. You participated in the taking...
HAEG: I participated...
ROM: ...of wolves?
HAEG: ...yes.
ROM: And you did it...
HAEG: And...
ROM: ...you had a permit...
HAEG: ...can I object? What relevance at all does this have to do with anything at hand?
ROM: Goes to what you're objecting to about Osterman wanting to attack these attorneys.
WOODMANCY: Overruled go ahead and ask your question.
ROM: Now when you were under oath and you testified – you testified that you were flying an airplane...
HAEG: Can you guys - notes...
ROM: ...you were flying the airplane...
HAEG: Yep.
ROM: ...Tony Zellers was the gunner and you guys were shooting wolves...

HAEG: Yep.
ROM: From the air...
HAEG: Yep.
ROM: And you had a permit...
HAEG: Actually I wasn't shooting them.
ROM: He was shooting them you were flying. You disagree that you were participating in taking the wolves?
HAEG: Not at all.
ROM: Ok. You knew you were outside the permit area when you did that?
HAEG: Not with the first one but with subsequent ones yes we did.
ROM: Ok and you testified to that that you knew you did it outside the permit area when you did it?
HAEG: Correct.
ROM: Ok. So you were guilty of taking wolves outside of the permit area?
HAEG: Correct.
ROM: Ok.
HAEG: But I wasn't guilty of what...
ROM: Now let me ask you...
HAEG: ... I was charged with.
ROM: ...a question.
HAEG: That's the problem.
ROM: Let me ask you...
HAEG: That's the problem is you could be...
WOODMANCY: That's – wait – wait – wait – that's not been asked...
HAEG: Ok I'm sorry.
WOODMANCY: That's not been asked Mr. Haeg.
HAEG: I'm sorry.
WOODMANCY: You'll get a chance to rebut.
HAEG: Ok and I need you guys to...my brains kind of you know – whatever...
ROM: Right. Now you also filled out sealing certificates to those wolves, right?
HAEG: Correct.

ROM: And you lied about it.
HAEG: Correct.
ROM: You put down information that was false on those sealing certificates, right?
HAEG: That is correct.
ROM: Ok and you told that to the jury when you had a trial, right?
HAEG: That's correct.
ROM: And all of this information was known to Mr. Robinson, right?
HAEG: Correct.
ROM: And it was known to Mr. Osterman, right? Is that correct?
HAEG: Correct.
ROM: Ok. They both knew you testified, you admitted certain illegal conduct, correct...
HAEG: Ok...
ROM: ...is that right?
HAEG: ...I testified at my...
ROM: Yes or no.
HAEG: ...own attorneys recommendations so we need to have that down...
WOODMANCY: Mr. Haeg yes or no.
ROM: Yes or no.
HAEG: Ask the question again.
ROM: Mr. Osterman knew this...
HAEG: Knew what?
ROM: ...that you testified to committing certain illegal acts, correct?
HAEG: That is correct.
ROM: Now do you think maybe it's just possible that he didn't want to attack other attorneys after you had made admissions under oath of your own illegal conduct?
HAEG: Absolutely not.
ROM: Ok.
HAEG: He told me the exact opposite when I hired him.
ROM: All right.

HAEG: He said...
ROM: Let me ask the questions.
HAEG: ...you should've never been testifying...
ROM: Let me ask the...
HAEG: ... at your trial...
ROM: Let me ask the next question.
HAEG: ...because you bought a deal with your own testimony and you bought it with a year of my families life and then they use that against me after I've paid for the deal that I bought. I bought and paid a deal and I didn't get it and they used it against me at trial.
ROM: Ok Mr. Haeg you've made allegations against a number of people that they testified falsely under oath. Correct?
HAEG: Yes.
ROM: And you've done research on what perjury is? Correct?
HAEG: Correct.
ROM: And you've had it explained to you in great detail by Jay Fayette in response to a complaint you made?
HAEG: I believe his response was that "to convict Trooper Gibbens of perjury the jury would have to believe I was telling the truth when I said I told him the sites he investigated were in 19D and not 19C" and Mr. Gibbens own – I have an email from Mr. Gibbens saying that himself.
ROM: I think that concludes my examination.
HAEG: Ok may I ...
WOODMANCY: You may respond to points...
HAEG: Ok.
WOODMANCY: Briefly.
HAEG: Ok. -Um- Mr. Fayette told me that the only way I could prove Trooper Gibbens committed perjury if I could show the jury or prove to the jury that I felt I was telling the truth when I stated that the sites Trooper Gibbens claimed were in 19C next to my lodge were really in 19D and he said a jury would not convict Trooper Gibbens

because I was a convicted criminal and my [e] my testimony would be regarded as incredible. Even though I was a master guide and even though Tony Zellers a retired F15 Airforce pilot and instructor had both told Trooper Gibbens before that testimony that the sites were in – in 19D. Now we also have Trooper Gibbens own GPS coordinates – and in fact I've seen a map that he had that all prove the sites were in 19D. And this is one aspect of why I'm so upset...
WOODMANCY: And this is...
HAEG: ...that...
WOODMANCY: ...has what to do with Mr. Osterman?
HAEG: Well he said that...
WOODMANCY: You're moving on...
HAEG: ...Gibbens statement – false statement how it was –uh- proven or how it's proven he committed perjury and I don't know what that has to do with Osterman's statement. I'm just trying to address the question. So I guess if I take this right is he can bring up stuff that I should objected – didn't know about objecting to and then when I want to cross examine him I can't because they're off target?
WOODMANCY: If you lay a foundation for what you want to do beyond saying he asked a question about another person so I want to say everything I want to say about this person. You're – I – I don't know how your state of mind proves someone else's perjury anyway. That's what you just said. You'd have to prove to the jury that you believe you were telling the truth in order for him to be lying.
HAEG: Well it – I think I may have...
WOODMANCY: It doesn't even make sense...
HAEG: Yep.
WOODMANCY: ...to anyone in the world...
HAEG: Yep well I think he said that...
WOODMANCY: ...so you are way out from – from where you need to be. Let's get back on with Mr. Osterman and if you have a statement about that. It – it doesn't matter

what you're state of mind is – whether Mr. Gibbens lied. Trooper Gibbens.
HAEG: Ok.
WOODMANCY: I – I think you're – you're confusing your own points here. I – cause what you're saying doesn't make sense...
HAEG: Well I think...
WOODMANCY: If you thought you were telling the truth he had to be lying. That doesn't make sense.
HAEG: Ok so I guess I just want to say is I had proof and I had sent it in and they sent it back – and apparently never looked at it and that makes me pretty upset when you can have troopers committing perjury to convict somebody of something. It just – that shouldn't happen. It should be...
WOODMANCY: Ok let's move on to Osterman...
HAEG: Ok. -Um-
WOODMANCY: ...Mr. Haeg...
HAEG: Ok as far as me providing – being a guide for a whole year -um- I discussed this at length with -um- my attorneys. Mr. Cole said in a – for the plea negotiating – plea negotiation that we were working on that I would have to give up my guide license – give up guiding – not give up guide license. He said I would have to give up guiding for a whole year and so based on that word from my attorney relayed to me from the prosecutor my wife and I sent back an entire years income to the people we had taken deposits for and that hurt us bad. Because we had to continue paying for our lodge leases and all our permits and our bonding and everything. We went – I have immense overhead – I gave up all the money the whole entire gross and paid my whole overhead and slit our own throats because my own attorney said that's what the prosecutor required. I fired Mr. Cole because of his refusal – because of his lying to me that he couldn't enforce that agreement.
WOODMANCY: Lets move on to Mr. Osterman.
HAEG: Ok.

WOODMANCY: You – you've made this point like 8 times Mr. Haeg...
HAEG: Ok.
WOODMANCY: I understand you feel you gave up guiding for a year. Please let's get this moving.
HAEG: Ok...Alls I know is we took an enormous hit – enormous for something that it was agreed upon and I never got what I bought and paid for because if anybody has any doubt that I bought and paid for dearly for that deal is so mistaken they're crazy. I mean if you people can sit here and look at me and my wife and we have 2 kids that we gave up all income for a whole year that didn't hurt us. It hurt us bad and we didn't get a thing for it. *(very upset)* That was payment – in fact they used my confession against me and the reason why I get upset is I know the Supreme Court would just go "when a man buys a – a deal he gets the deal". It's as simple as that I bought and paid for it and it was all used against me. I had no money to go on to hire more attorneys – I'm broke now and they used all my statements that I made for the same deal. It's so wrong and that's why I'm upset is because I read these opinions from the US Supreme Court and they would turn over in their graves the people that made those opinions if they knew what happened. We – let me get this out. My attorney said the prosecutor needs me to give up all my weapons and all my defenses for this deal. He said you do this and you get this. You do this and you don't have to go to trial. You get this punishment here. So my wife and my family we gave up all of our defenses and all of our weapons. We gave the State everything they needed – we gave them all of our money so that we could have something we could live with – 5 hours – 5 business hours before we were supposed to get this deal Prosecutor Scot Leaders changed the charges in violation of what I had bought and paid for and because I had already given him all of my defenses and all of my weapons he then sent me into the ring to do battle with the gladiators. And there's a

U.S. Supreme Court case it's Cronic I believe where the Supreme Court judges quote Judge Wyzanski and he said "While a criminal trial is not a ba – a – a contest between equally armed adversaries neither is it the sacrifice of unarmed prisoners to gladiators." Now what happened to me is the State of Alaska used deception – lies to get me to give them all of their armor – or give – yeah give them all of my armor, all of my weapons so that I did not have to go do battle with the gladiators. Then after they had my weapons and all my armor they threw me into the arena with the gladiators with no weapons no armors and with my hands tied behind my back to do battle at trial. Which we were – most of us was there and that was such a gross perversion of the system that it's almost incomprehensible - virtually incomprehensible. At least according to the U.S. Supreme Court's definition of what happens when you make a deal and you rely on it to your detriment. They said giving the prosecution information is greatly to your detriment. I think a 5 hour confession put me at a significant disadvantage at trial. In fact my statements are in every information that was filed – all 3 of them. It says "in an interview with Mr. Haeg he said this-this-this and this" in all 3 of them. That violates due process, that violates the Constitution, that violates evidence rule 410, that violates the attorneys – the prosecutors duty to look out for me to have a fair trial because even though he's my adversary it is his duty according to U.S. Supreme Court to look out for my interest. And he was just hacking on them and using my own attorney's conflict of interest. I asked him "how can they use my statements against me"?

WOODMANCY: Let me...

HAEG: You know ok – and ...

WOODMANCY: we're not trying this whole thing...

HAEG: Ok.

WOODMANCY: How does this relate to Osterman?

HAEG: Osterman did not...

WOODMANCY: Wrap this up.

HAEG: ...utilize any of that for me. None of it and he said he would. He said he would when I hired him. He took my money, spent it, and then he said he wasn't goanna use it – wasn't goanna use it, and then he handed me a bill for another $30,000 dollars almost. Or well $24,000 dollars on top of what he said it would cost. I'm like you know – I'm – and I'm sorry I get so frustrated. I know there's a conflict of interest whether it's the click they're in, whether it's I guess I firmly believe that Brent Cole sold me out and likely started off maybe somewhat –uh- you know I mean it actually –uh- he's told me that the – the State – the Governor was going to be horrendously involved in this and would put immense pressure on not only the DA but on the judges to give me a harsh sentence. And I was like how can the Governor put pressure on the judges in my case? Cause I looked at what happened to me – maybe the governor put pressure on Brent Cole, maybe he put pressure on Chuck Robinson, maybe he put pressure on Mark Osterman. I've been to the FBI quit a few times about this and they're starting to – got enough stuff that they're starting to look into it. I mean what has happened to me is – is one of the most amazing things that's ever happened to anybody that I've found reading through literally thousands of case law. I mean now I can read through case law like mad but I don't know if it's money. I don't know if it's you know every person in the business has a sense of loyalty to the other people in the business. The people that guide around me if they need help if I can help them I generally do it. I don't know if I would do anything illegal to help them but there's a – a loyalty there. Among the State Troopers I'm sure there is – cause I've seen it. I think among attorneys there are. I think among firefighters or grocery clerks. And maybe that's strong enough for what has happened in my case. I don't know cause Brent Cole – what he did to me – he will be disbarred for life and you guys mark my words he'll be disbarred for life for what he did to me. And if he could try to somehow escape liability for that what is he

willing to tell Robinson and Osterman? You know – look at – look at me. See this is how I started look at...
WOODMANCY: Ok hold on. We're getting off...
HAEG: Ok.
WOODMANCY: ...to another subject matter here...
HAEG: Ok.
WOODMANCY: I want to stay on track with Osterman and then see if Mr. Rom has any more questions and then we move on.
ROM: I don't have anything further.
WOODMANCY: Ok -um- do you have any other witnesses – anything else – you're done – not done?
HAEG: I think we've – we've pretty much hashed over what went on and I'm more grateful then you'll know to have this opportunity and I thank you.
WOODMANCY: With the pro se issue we're just now beginning. Now –uh- we're here and the reason that we're here is the defendant has said that he wants to represent himself. And Mr. Haeg sir you know I'm goanna read from a script so that I make sure that all the important parts made to you and I don't err and forget something. So part of what I'm goanna read here is from a script and then we'll (indecipherable) and stuff and then we'll move on. But this is a (indecipherable) court. I need you to listen to this carefully...
HAEG: Ok.
WOODMANCY: And understand it carefully so...
HAEG: Do I need to take any notes or just listen?
WOODMANCY: If you think you can take notes while I'm talking, fine, but...
HAEG: Well it's kind of hard.
WOODMANCY: You need to get this down.
HAEG: Ok.
WOODMANCY: This is important and I'm goanna read this real...
HAEG: Slow.

WOODMANCY: ... and I'll go slow. The defendant has said that he wants to represent himself. A judge's response to these questions is not - or to this request is not a simple matter. I must review with counsel and with you requesting that the judge must a[ct]- must ask and the things he must do. It is true that in some circumstances a defendant can waive his right to counsel and can choose to represent himself. But the course – court must makes some very important stands first. The court has to first find out if the waiver of counsel is knowing, voluntary, and intelligent. In order to do that the Court must explain to the defendant the advantages of having a lawyer and the things that a lawyer can do and the disadvantages of having no lawyer and the risks that he will face if represents himself. Even if the court finds that a defendant is competent, knowingly and intelligently waive or give up your right to an attorney and the court makes the proper statement to explain why an attorney can give and the disadvantages of going without an attorney. The court must also make a second decision. The court must decide if the defendant is capable of making an intelligent, coherent, orderly presentation at trial and not be disruptive. Some people say things better then I can and I want you to read something that then Chief Judge Coats of the Court of Appeals wrote about self representation in his desent in Verts v. State "A defendant has the right to represent himself. The decision by a defendant however to exercise this right is almost always a bad one. The cases seem to recognize the right of the defendant to make a bad choice. They permit him to choose to commit judicial suicide by defending himself. The court has the duty to make sure that the defendant who wishes to represent himself is fully aware of the dangers of self – self representation and the benefits of having an attorney. Because the decision by the defendant to exercise this right is usually such a bad decision and is generally so disruptive to the proper function of the judicial process the trial court must make

sure that a defendant who chooses to represent himself knows what he is doing. The trial judge should attempt to discourage the defendant from representing himself. If he insists however the defendant must be allowed to represent himself if he is capable of knowingly and intelligently waiving his right to counsel and had has certain minimum com – competence to – conduct a defense. So even if a defendant is confident to knowingly and intelligently give up his right to be represented by a lawyer if I'm convinced that the defendant's behavior will disrupt the courtroom – then – that he won't obey reasonable rules governing the presentation of evidence and courtroom manners and decorum I may still disallow an otherwise competent individual from self representation so that the trial can proceed in an orderly fashion. I will not review to the things a lawyer can do and I think you might not know how to do. Now some of these things won't pertain on appeal but they (indecipherable) lawyer destiny so I'm goanna explain them all. A lawyer trained in the rules of court. These rules – this huge book I showed you a while ago. Theses rules include the criminal rules and the rules of evidence. A lawyer knows how to make motions and what papers have to come in with motions. The rules require delivery of service or a delivery or service of all papers filed with the court upon opposing counsel. A lawyer knows – knows the reasons to be offered in asking for things such as change of venue, protective orders before trial, and dismissing an indictment. A lawyer knows the grounds for disqualification of jurors and how to exercise (indecipherable) of jurors. A lawyer knows how to conduct void ere in jury selection and a way to find out things about the jurors. A lawyer prepares and submits jury instructions and volume of law (indecipherable) best help the client's case. A lawyer knows how to object the jury instruction and the things in jury instruction that should be objected to. A lawyer's able to subpoena witnesses - something that will be difficult to arrange if the defendant

is in jail. A lawyer is able to conduct and interview witnesses. There are special rules about contacting witnesses or a victim. It would be difficult not impossible for a defendant to interview witnesses if the defendant is in jail. A lawyer knows about discovery and pretrial proceedings. Sometimes there are expert witnesses and in the last 3 or 4 years there has developed new and special requirements for the admissibility for expert testimony. These rules are from the Dobert case from the U.S. Supreme Court and the McClune case from the Alaska Supreme Court. Lawyers know these rules. So to summarize a lawyer knows how to ask the court to take actions for a change of venue, to dismiss an indictment, matters in jury selection, how to ask and grounds for seeking disqualification of a judge, and how to write jury instructions, interview witnesses, and present expert testimony. Critical during a trial is the handling of exhibits. The write they have to be marked, prepared, and used. In addition the rules of evidence govern own and when exhibits may be objected to. Lawyers are familiar with these things. Lawyers know how and when to ask for judgment or acquittal. There are certain motions that have to be made at a certain time. If they are not made at the right time they are not allowed to be made at all. By making motions or objections at the required time a lawyer can preserve the right to maintain those objections in an appeal. The rules of evidence are a complicated matter. They're in a book as thick as a big city phone book. It's something that students in law school take one full year to learn. Trial lawyers are familiar and comfortable with the rules of evidence. There are complex areas in the rules of evidence that come up in the course of a trial. Evidence is critically important because the jury will rely or the judge will rely on that evidence in rendering if your guilty or not guilty verdict. Lawyers know what is relevant evidence and the balancing test of relevant or prejudicial evidence. There are special rules of evidence that (indecipherable)

that allow evidence that is not allowed in other cases. Lawyers know the rules of evidence on such things how do you (indecipherable) the testimony as a witness, what is hearsay, what looks like hearsay but isn't really hearsay, when hearsay is allowed. When witness or defendant (indecipherable) a privileged (indecipherable) testimony and when evidence of a witnesses bad act in the past is allowed and when it's not. Documents may be introduced at trial and document – documentary evidence in writing have a whole set of special rules as well and this works two ways. Both when a lawyer can use evidence on your behalf but also when a lawyer can stop some evidence from being used against you. You have to understand that presenting a defense is not a simple matter as telling your own story. But it requires adherence to many technical rules governing the conduct of trial. Trial lawyers have experience and training in trial procedure. The prosecution of a case may be managed by experience trial counsel. A person familiar with legal procedures may get a prosecutor – I'm sorry - a person unfamiliar with legal procedures may give the prosecutor an advantage that the prosecutor wouldn't otherwise have in the case. Because if the person may fail to make objections to inadmissible evidence – when inadmissible evidence is not objected to the law says the objection is waived and the evidence is allowed. You won't be able to later complain that inadmissible evidence is used. You may not – you might not make effective use of your right of (indecipherable), you might make tactical decisions which produce unintended bad counsel, you may have heard that some people who are convicted later challenge their conviction claiming they received ineffective assistance of counsel. If I allow you to represent yourself you can't later claim that you had an ineffective lawyer because you insisted that you be your own untrained lawyer and the courts say you can't complain later. Finally I want to stress that when a lawyer sits at the defense table there are two people – each with different rolls. The lawyer

says the kind of things that lawyers say. Some defendants testify and some don't. If you testify and also ask questions at trial on your own lawyer the effective – the effectiveness of your defense may be diminished because of this dual role. When you say things as a lawyer the jurors are going to hear the words coming from the defendant. The questioning, and objecting, and arguments that a lawyer's expected to do will be said by the defendant. Even if you don't testify. Jury sees and hears what you do and say throughout all of this – at trial. Sometimes lawyers might annoy or disappoint jurors. When you represent yourself it slops onto you because you are wearing the two hats. So you may disappoint or otherwise impress a jury that might hurt your case or a judge. You must understand that if you represent yourself you will not have the schooling experience of a lawyer. If you competently and intelligently chose to represent yourself I must let you do that even though you won't know what you're doing at trial. If you are admitting to – if you are permitted to represent yourself you will not be able to change your mind in the middle of a trial. If you say "stop I want a lawyer. I want to continue. I now realize I made a mistake. I need a lawyer. I don't know what I'm doing." It will be to late. I do not say this to insult you or to embarrass you but to let you know the disadvantage you'll be facing. I'm trying to paint an accurate picture as I can about how vulnerable you'll be at trial on the serious charge if you represent yourself. So now I'm goanna ask you some questions about your experience and education so I can determine whether you can present a coherent presentation to the jury. These questions will not implicate your Fifth Amendment rights and have nothing to due with the charge you face. I will ask you about your experience and your education so I can decide about whether you'll be able to make the cornier presentation of your case. I'm going to ask you to take an oath before I ask – ask you these questions. All right?
HAEG: (kind of make a noise)

WOODMANCY: Ok you've already been sworn in under oath so I'm just goanna remind you that you're under oath but I'm – I'm goanna tell you some things. This is what we normally read to a defendant at the beginning of the trial when they want to represent themselves from the beginning. Choosing to switch over and rep yourself at – represent yourself at the appellate level is paramount to (indecipherable). You can see these – this representation hearing the things that we're having now is – is preschool – it's first day -um- case – when – when case count. And you're way beyond first day. You've been through 3 attorneys, trial, said failed negotiations, and you're at the appellate level. I cannot impress you – impress on you enough how much I feel that a – a decision to represent yourself is not a good one. For anyone – not just you but for anyone. So having said that I'm goanna – I'm goanna go forward with these questions but understand you have been given tons of leeway today.
HAEG: I understand.
WOODMANCY: Leeway that you will never get again. When you get in front of an appellate judge and you speak out of turn that will be corrected – there will not be near the latitude that you've had. Not anywhere near. I mean your on a playground now compare to being – this is goanna be seriously (indecipherable). -Um- I'm goanna ask Mr. Rom one question before I go forward. Mr. Rom how many years of law school did (indecipherable)...
ROM: 3 years.
WOODMANCY: After 4 years of (indecipherable). Total of 7 years. 7 years of education. As the script said he spent 1 total year on this book. You're goanna get up to date on it before the 21st (indecipherable) appellate court's on the 21st. Any idea how tuff this can be? Any idea how impossible this can be? You submitted a number of motions to me and to a number of courts that are totally not in proper form. I mean your handwritten request for videotape - not circulated to any other party – do you realize that any

motion that is presented to the court the opposing counsel has to get a motion (indecipherable) before the motion can be ruled on? Everybody gets a chance to have status hearing, they get a chance to have an opinion, they get a chance to have a say if so requested. All these motions that you filed for expedited consideration on – on your things if you were at a place where you could do that yourself it would've delayed your trial 2 or 3 years. Because I can't say to Mr. Rom –uh- gee he wants this thing tomorrow. Mr. Rom has other trials – he has other commitments. He would say Your Honor I'd like to (indecipherable) here on this – I'm free –uh- September 12th. And I can't say go tell the other judges you're out of there because Mr. Haeg wants it (indecipherable) or whatever judge is there. Every one of these motions would put things on hold. We're not goanna be running around and say gee we're goanna do 10 motions at a time. All of these things – issuing all of these requests for expedited (laughs) consideration could slow things down unbelievable. So having said that I'm goanna ask the following questions. How far did your formal education go?

HAEG: –Uh- high school.

WOODMANCY: Any college?

HAEG: Took a welding course.

WOODMANCY: Ok (indecipherable) took a welding course. What kind of jobs have you held?

HAEG: Commercial fisherman, trapper, big game guide, herring spotter, salmon spotter, -um- I have a flight instructor rating but I've never really used it.

WOODMANCY: What kind of training have you had for the job you've held?

HAEG: School of hard knocks for trapping and fishing and whatever for the flying I've took the training to learn to fly - um- and that's about it.

WOODMANCY: Did you ever sit through a trial and observed the whole trial? Not as the defendant – have you ever gone and sat and watched a trial?

HAEG: No.
WOODMANCY: Did you ever watch a jury trial?
HAEG: Well other then watching parts of them on t.v. but that don't count.
WOODMANCY: That really doesn't count. –Uh- have you seen any trials, felonies, or misdemeanors besides your own that you were involved any trials – felonies or misdemeanors?
HAEG: Have I seen them or what?
WOODMANCY: Have you observed them?
HAEG: No.
WOODMANCY: For a felony or misdemeanor?
HAEG: No.
WOODMANCY: Ok and so the only trial you – you have been exposed is the one you were in? I don't want to ask you what your defense is because you don't have to tell anyone now before trial. But do you understand that you will have to respond and participate as the State puts on its case and then you may present your own case as well. Do you believe that you'll be adequate to convey your case in front of a judge and jury?
HAEG: I do.
WOODMANCY: Let me summarize what I've said. Our rules come from the rules in the Court Rule Book – the laws, the statute they're from the Supreme Court or the Court of Appeals decisions. The case is (indecipherable) even though you refused an appointed lawyer I still don't have to let you represent yourself. I have to make sure that you know the advantages of having a lawyer represent you and the risk of representing yourself. I also have to make sure that you will be able to rationally and coherently present your case at trial. And so even if you don't know how to act like a lawyer, even though you don't know what you're doing at trial, if you know what you're giving up and can rationally and coherently present your case at trial I'll let you be your own lawyer.
HAEG: Ok.

WOODMANCY: And that's where I'm at with this Mr. Haeg. You have any questions about any of this because you're at a time in your life when you're goanna make one of the probably the most important decision you ever make.
HAEG: Well I wrote down a thing while you were talking and it says, "I would rather have judicial suicide then attorney assassination."
WOODMANCY: Ok.
HAEG: And you know I would like to you know I've made it pretty clear that I understand and with Mr. Rom very professional, you're very professional and I understand the disadvantage I'm up against. But to me it's much like playing a game of cribbage – you play cribbage Your Honor?
WOODMANCY: I do.
HAEG: I grew up playing cribbage. You may have the best hand in the world but that doesn't mean you're goanna win. It also depends on how you play your hand. I have a royal flush in spades in my defense. Yet my attorneys will throw that away and also not really do correct in the procedural aspect throwing away my defenses. Well if – they'll throw away my royal flush and maybe be pretty good – please Mr. Rom and yourself and a lot of other people their ability to make motions when they're supposed to, form these things the way you want to see them but is that what is goanna win my case is good form or is it substance? And my attorneys have been unwilling to use the substance in my case and I believe that wholeheartedly – my wife believes it wholeheartedly and there's a lot of people out there in the world that also believe wholeheartedly that I've –uh- been keeping abreast of what's been going. –Uh- including and you had – you'd asked at some length whether I could have counsel sit by me. Whether I could be represented and have counsel as under an advisory position and I've looked for that. And I've actually have a couple people that help me when I need it most. One of them is my business attorney – Mr. Dale Dolifka. He used to be a criminal defense attorney. He has told me – he's the one that

opened my eyes. I told him what would go on in my case and he said "Dave fire your attorney and get a new one." And so I did and I've asked him to represent me – I begged him – I flat got down on my knees and I mean I don't know if I got down on my knees but I...He said he doesn't have criminal malpractice insurance. I said I'd buy it for him. He said you know -um- he's been out of the field for I think 15 years. I said I didn't care. I know realize that loyalty to your client overcomes all that other stuff. This loyalty to your client means it doesn't matter how good of a attorney you are or even if you have an attorney. If you have a disloyal attorney you're whole case is – is sabotaged. And you may not ever even realize when it happens. So if you know with Dale Dolifka I tried and tried. I stared emailing him everything and getting him involved and all of a sudden he says "Dave don't email me anymore, don't fax me, just call me, preferably at home, even if it's the middle of the night." And I said "why". He says "Chuck Robinson's wife works for me part time." Dale Dolifka is probably the most respected attorney in business in the whole Kenai Peninsula. You do your research. You talk to him about what – what has happened in my case. He has said – I said, "Man it's getting bigger and bigger". Dale said "Dave you have no idea how big it's goanna get before it comes to an end." He said, "even I don't have an idea." He said to start getting attorneys outside the state that could have – could back off far enough to see all the players and see what made all these people do things. Now it was very difficult for me to hire Mr. Osterman because Chuck Robinson was my friend from when I was about yeah high and when I was 16 years old I flew him across the inlet and took him halibut fishing. When I hired him I was so relieved I was like "oh my god." Yet when he – when I asked him – I went in with 2 tape recorders and I asked him why did you never tell me about ineffective assistance of counsel? He told me that my own attorneys lying to me wasn't ineffective assistance of counsel. I asked – I asked

Dale Dolifka about that. Dale Dolifka went – he said - I actually called him when I figured out what Chuck Robinson did I called him at 1 in the morning and we talked till 4 in the morning and this is an attorney that I respected – everybody respected. When we hung up he finally said I got to get some sleep but David you remember this "I underlined that Chuck Robinson said it was not ineffective assistance of counsel to lie to your own client." He said "I underli – underlined the word lie 7 times as we've been speaking."
WOODMANCY: Ok and as we had concluded we were done with Mrs. Haeg and we're now goanna call -um- Mr. Greg Pearson. Is that correct? Pearson?
PEARSON: That is correct.
WOODMANCY: So we can hear the witness. Ok sir would you please stand and raise your right hand. Do you solemnly swear or affirm that the testimony you will give in the case now before this court will be the truth whole truth and nothing but the truth?
PEARSON: Yes.
WOODMANCY: Ok please state your name and spell it for the record, please.
PEARSON: My name is –uh- Greg Pearson. G R E G P E A R S O N.
WOODMANCY: Ok please be seated. Are you hearing all this ok Madame Clerk?
MADAME CLERK: Yes so far it's good. Thank you.
WOODMANCY: Ok. Go ahead Mr. Haeg.
HAEG: –Uh- PEARSON how long have you known me?
PEARSON: -Um- I'm guessing 20 years.
HAEG: Ok.
PEARSON: I'd say 20 years 25 years.
HAEG: And would you say that I've done well in most things that I took an interest in?
PEARSON: Yes I would say that.
HAEG: Ok. –Uh- would you consider me intelligent?
PEARSON: Yes.

HAEG: Ok. -Um- would you –uh- -um- would you – have you read any of this case or any of the – the – or any part of this case that we've sent you?
PEARSON: –Uh- some of it. I'm certainly no authority on this case whatsoever but I have read some of it.
HAEG: Ok and what you have read would it raise any questions in your mind as to the loyalties of my own attorneys up to this point?
PEARSON: -Um- yeah a couple of things that I've read - um- I'd say yeah. I'm – I'm not an attorney and I've read a few things but there were a couple things that I was – I mean one in – one in particular that I can remember but yes.
HAEG: Ok and do you think that if I found an attorney that I thought would represent me do you think I would hire him at this point?
PEARSON: –Uh- yes.
HAEG: Ok. So I guess if I'm – I guess if I'm looking at this to go on my own I'm only doing it for a pretty – for what I feel a pretty valid reason?
ROM: Is that a question.
HAEG: Yeah.
WOODMANCY: Yeah I didn't hear a question in it in anyway...
HAEG: Ok.
WOODMANCY: I heard a statement so.
HAEG: Ok I said – I guess what I meant is in your opinion would I have – have to have a pretty valid reason in my own mind to go on my – to go pro se or by myself?
PEARSON: I don't know a lot about this case in particular but in knowing you and wanting to do things correctly or how you feel is incorrectly I would say yes.
HAEG: Ok I could work with that. -Um- do you think I'm doing this because I see no other – no other way to go?
PEARSON: –Uh- I believe that you believe that, yes.
HAEG: Ok -um- and I guess you haven' seen the whole file from what you have said you could – you may not know

– I mean –uh- you have concerns but you don't know the whole picture?
PEARSON: Correct.
HAEG: Ok and that's I guess you know that's probably all that I want out of you know PEARSON and your witness.
WOODMANCY: Go ahead Mr. Rom.
ROM: He's got a notion that there's a conspiracy. You've heard that. You've heard his testimony about the lawyers not being loyal to him but being loyal to each other.
PEARSON: Well I have heard you say conspiracy but I never heard Dave or I can recall actually thinking there was a conspiracy.
ROM: Ok. You heard him describe how he felt his lawyers weren't loyal to him but were loyal to each other?
PEARSON: I have heard that yes.
ROM: And you heard the part about where he said that he couldn't rule out that there'd been money exchanged or they were paying one another off or something of that kind of nature?
PEARSON: You know -um- the first I had ever heard of any money exchange was when you brought that up asking him. So -um- no. Yes and no. -Um- you brought that up and he said well maybe but I had never heard that until you brought that up.
ROM: Ok.
PEARSON: So I don't know if that's (indecipherable).
ROM: Do you think that's kind of a fantastic idea?
PEARSON: -Um- the money part being exchanged between the attorneys I think that might be a fantastic idea. The fact that one attorney doesn't want to harm another attorney I think that's completely realistic.
ROM: Ok. You said that you had read some things about this case. Do you recall what they were?
PEARSON: –Uh- I read some things about Chuck Robinson. -Um- and a – and a conversation that -um- Dave had had with Chuck Robinson. I'm sorry what would be the word for that.

ROM: Transcript?
PEARSON: Transcript, yes.
ROM: Was it your impression that it was a tape recorded conversation between Mr. Haeg and Mr. Robinson?
PEARSON: I – I believe that's where that came from.
ROM: Ok.
PEARSON: Correct.
ROM: Ok. Was there anything that stood out about that?
PEARSON: Yeah.
ROM: Yeah. What was it?
PEARSON: Well he had spoke about the good old boy network. He said you know Dave that's just the way it is. Dave says the way what is? He says just the way things work. It's the good old boy network. And then he went on to say you're – you're not in the fold.
ROM: Now why would he be saying that to Mr. Haeg?
PEARSON: I have no idea. You would have to ask him.
ROM: Ok cause you didn't glean anything out of the transcript at all? Why...
PEARSON: I don't recall everything that was written on the transcript so I can't really give you a fair statement on that.
ROM: But nothing that you recall?
PEARSON: Nothing – say that again.
ROM: Nothing you recall that would trigger –uh- any indication why Mr. Robinson would be telling Mr. Haeg I'm part of the good old boy network and this is the way things work. I mean...
PEARSON: If what I recall -um- I – I just can't recall it word for word. I remember recalling it was something to do with basically that's just the way it's goanna be. There's nothing you can do about it. -Um- you might not like the decision, you may not like things the way they are going, but it's just the good old boy network and that's just the way it works.
ROM: Ok. All right I don't have any other questions.
WOODMANCY: Mr. Haeg?

HAEG: –Uh- a minute. Ok -um- going back to the transcription that you read of a conversation between me and Mr. Robinson – in your opinion did it appear that Mr. Robinson knew he was being taped?
PEARSON: –Uh- never thought anything one way or the other.
HAEG: Ok do you – in your opinion do you think Mr. Robinson if he had known he was being taped would have said the same things?
PEARSON: No. I don't think he would have said that. I'm – I was surprised he said that so...
WOODMANCY: How does this go toward your ability to defend yourself? I mean I haven't heard an objection but I want to keep us on track...
HAEG: -Um- I think that's all I had. Thank you Mr. Pearson.
WOODMANCY: Mr. Rom?
ROM: Nothing further.
WOODMANCY: Ok PEARSON thank you – you're excused as a witness and...
PEARSON: thank you.
WOODMANCY: ...lets have the phone back up here and next witness Mr. Haeg.
HAEG: Can I call myself? I guess I would like to call myself at this time.
WOODMANCY: For the record you're still under oath.
HAEG: Ok -um- I guess I'd just like to apologize we did forget one piece of case law that I'd of like to have brought out it was pinned right above my phone so I wouldn't forget it and wouldn't you know that's one thing that I did forget. In it – it has been –uh- held that it's a constitutional right of a defendant to represent themselves. The only time that it's really been –uh- denied to them when it's been proven that they've had mental problems; very young; maybe in the hospital unable to physically do it; -um- cases that it's been held that they knowingly and intelligently waive their right to counsel have been –uh- I believe 20 year old –uh-

people that have not held a professional job, never been to college, and high school graduates; in much serious – much more serious cases then mine. Mine in all reality in though it may affect our way of making our lives and livelihood I won't go to jail for a long time you know I'll still be around my family and kids so I'm making a pretty big issue of this because it essentially sac – this case the way it turned out is sacrificing what my wife and I built up over a great many years and that's why I'm fighting so hard for it. -Um- if me with a case that is only concerns misdemeanors should be allowed – should be able to go pro se if I believe it is the U.S. Supreme Court determined that 20 year old kids that were accused of felonies to go pro se were allowed to do so because they knowingly and intelligently waive their right to counsel. I think that it's a slam-dunk for me to go. That's my personal opinion. I regret that I don't have the case law to give you. If the court Your Honor so wishes when we get back home we can fax you a copy of the caselaw, we could fax Mr. Rom a copy of the caselaw. -Um- I do get emotional. I guess it's in my nature. Some people are less emotional then others -um- you know so that does detract from my ability to go pro se but is it something that is a – a great upset to the court? It has been held that that only actions that are – you could be thrown into jail for contempt of court almost – or the only ones egregious enough to not allow someone to go on their own and although I may break down and cry out of frustration every once in a while I don't think that rises to the level of something that someone like yourself Your Honor should throw me – or hold me in contempt of court for and throw me in jail. -Um- I understand that I'm not at my best and it's because of the stress and what's happened. -Um- you know a lot of – a lot has been made that I'm making mountains out of mole - molehills or a lot of the attorneys that I talked to they say Mr. Haeg you're jousting at windmills and I – I tell them I've read Don Quixote too. But sometimes when you joust at the windmill it really is a

monster and I guess I ask this court to humor me, my fancy that this is a conspiracy. Mr. Rom you know has made a big thing about it. It might not be a conspiracy. It might be a collaboration, might be just a lot of people making a lot of mistakes that all ended up ending up on my plate to pay for. I don't know if it is a conspiracy - I don't know what but I know that I did not get a fair trial because there were things that happened before trial that deprived me of anyway of getting a fair trial. And – and so that is why I feel I should be able to go, that's why I'm emotional is because I feel I was intelligent enough to read the law – the caselaw, apply it to what happened in my case and determine that you know I don't if – you said I can't say what my attorneys did or dump on them but I feel my attorneys did me more then a disservice. And if I'm the only one that can come before the court and point that out I'll be the one that does it.

WOODMANCY: Mr. Haeg you keep going back to why you want you want to go pro se...

HAEG: Ok I'm sorry.

WOODMANCY: Can you please stay on track with why the court should let you...

HAEG: Ok I – I tried to stay on track with that you know. I think you should be able to tell that I'm reasonably intelligent, yes I am emotional. Do I have cause to be emotional? I feel I do. We've – we've lost virtually our whole life over this. And I don't think that it deserved that – personally. In fact I know it didn't. -Um- and that's why I think that the court should allow me to go because –uh- I'm intelligent, I definitely knowingly waive my right, I think it's – should be clear to the court that if I find someone that I feel is goanna represent me and not the interests of my other attorneys or their own interests I'll hire them. I've been looking for people to help me. I have the CEO of a very large –uh- attorney firm in Minneapolis that I've talk – that I talk to on a regular basis he gave me his – his cell phone number that he said that I can give to

you and you can call him to confirm that I am talking to people. My business attorney like I said has been helping me. So I do have some help. I'm not just – I'm not just – I didn't just cut all ties to attorneys. I cut ties to attorneys that – that stated to me that my former attorneys lives and livelihoods are more important to them then my life and livelihood and so I have other people helping me. I will hire somebody else if I find someone and boy I hope to god I do because with the research I've done, with somebody as skilled as Mr. Rom by my side I would be unstoppable. And I know that as absolute fact. You know I've flown my whole life since 16 years old and Trooper Gibbens know this and all of you should know it that fly out here you don't live to be a long – or old pilot out here by – by making too many mistakes. There's sometimes when we get in tough situations and we turn around or we look at this way and we look at that way and we're professional enough that we consistently make the right decisions and I grew up that way. I grew up on my own. When things were broke I fixed them. Maybe that's why I think I can do this but if – if 20-year-old defendants facing felony charges were allowed to go pro se me to go pro se should be a slam-dunk. I mean I will – I guess I would like to just promise the court – promise Your Honor that I will work on my ability to stay on track and I think right now I'm telling you what I'm goanna do to help my ability to represent myself, -um- I'll read that book so I know the little times I should be able to object, how to object, what I can object about. I have ignored that book. I've – I've concentrated on my – the caselaw that applies to my case. I was looking for the substance and not the -um- the substance and not looking at the defects of form. Because it doesn't matter how good of form you have if you have no substance you have nothing. But if you have substance and have defects of form you still have something. So I applied myself to what I felt was the most important part of helping my case and you've pointed out that I've neglected part of it and I have

because it's only been very many months when I started on this course of seeing why what happened to me. So I guess I would just like to assure you Your Honor that not only am I capable, knowingly and intelligently waiving my right to counsel but I'm goanna continue educating me so I get better and better and better. And in fact the amount of study I've went in – I've actually asked the Bar Association how much legal training that it would take for me to pass the Bar because I would be crazy not to continue this avenue of a an occupation because I actually think I would be good at it. It's much like trapping. You take with trapping and you look at an animal that's doing whatever and you think well what's this animal goanna do, what's my tactic to get him in there, do I use a big bait? Nope it's not a wolverine. Do you use curiosity because it's a lynx? So you don't need a big bait you just hang a little piece of tinfoil up there and this is much like that. It has – I can see where people get involved in it and love it as a – as a career. I could see how –uh- there's not seasons, there's no bag limits, so I may actually go into this as a career. This may be my first case. In fact it has been my first case and -um- another reason you should you know let me go on my own is –uh- the thought just kind of flitted out of my brain so I'm not staying on track. -Um- is can I just catch myself for a moment here. -Um- I guess that's – that's basically it. Is I think I'm doing a pretty good job now. Probably I mean I would almost like to ask Mr. Rom if I'm as good as most other pro se defendants he's up – been up against. I would – I would say that I'm as good if not better then most. Still no attorney. I know that. I know that I have to hit the books and I have to (make exhale noise) and oh this is the point that I – that jumped out of my brain is it's the courts obligation to make sure all this is fair and to me fairness is -um- after all this goes down in smoke and I think I you know pointed this out once upon a time is if – if I go down in smoke – and when I go smoke – my conviction is upheld – my sentence is upheld. You know I don't how to my

sentence can be upheld cause Magistrate Murphy never informed me I could appeal my sentence...
WOODMANCY: Please go on with you.
HAEG: Ok. But what I'm getting at is if nothing happens in my sentence or conviction yet I know I did everything I could I'm happy. Ok but what really up – what really got to me the most and why I'm maybe so emotional and I have such a hard time is I could never figure out that me hiring the best attorneys in the State I feel or the best ones that I could afford which were very close to the best ones that anyone could afford in the State could keep losing on a consistent basis and that drove me almost crazy. I – I put my nose to the grindstone, I research, I work hard, and if – if I went out of this with the same conviction that I have now and the same sentence as I have now yet thought that the reason that was is because attorneys were representing me that really didn't have my interests at heart bolstered by the proof I have that would bug me till the day I died. And that's the honest to god's truth. I need to know if my suspicions are correct or not or I can't really go on with life. And I don't know anyone here understands that but it's such a big part of my life that I'm giving up I need to just – I need to go see what's down this path. I need to see the end of it. I think that it's my right. And that's you know that's the essentially you know I had wrote some stuff here about the Super Bowl I think I already talked. Can I just run through this? We talked about the Super Bowl thing.
WOODMANCY: I don't remember us talking about a Super Bowl.
HAEG: Ok about – ok let me just go over this -um- and this is about me trying to recuse you and I think maybe that will ring a bell. Is -um- this is so important that I wanted the judge with the most experience and the most knowledge of everything. Maybe you know the most.. WOODMANCY: You're ok.
HAEG: -Um-
WOODMANCY: Madame Clerk you still there?

MADAME CLERK: Yes.
WOODMANCY: Ok go ahead.
HAEG: And you know it was that more then anything. I just wanted someone that could listen to the caselaw and understand it. Maybe have read it before. It's possible now that you say that you've been doing this for such a long time that you know the truth of some of the things that I'm saying but I wanted an attorney that can close his eyes and recite caselaw upon caselaw because that's goanna be my strength. Is having someone observe these proceedings that has vast amounts of experience. And the way I look at it as it's much like a Super Bowl game - in the Super Bowl it is such an important game that only referees with the greatest experience, knowledge, and reputation for fairness are asked to apply for the job or asked to ref. This and I think this is reiterating stuff that I did before but this case is the Super Bowl of my life and probably of my family's life. I mean I cannot foresee going in through even remotely close to this. Up until this time I had 2 speeding tickets when I think I was a teenager. That's my criminal history to date. Because like the Super Bowl teams asked if I could have a refer – referee with the utmost experience, knowledge and reputation for fairness. That's why I asked for someone other then yourself because I had heard that you have no formal legal training. Ok I know you've been in this a long time so maybe you have training that makes up for that. And I – I know I've told you this stuff. I but I'll say it again if you'll allow me. I know in your heart if anyone in your family were going to have surgery or some other event that could effect the very fabric of your life you would also ask for a person – for the person presiding over that situation to have the utmost in experience and knowledge. You know I mean if this was one of my traffic tickets...
WOODMANCY: We're talking a lot about me here.
HAEG: Ok.
WOODMANCY: I know what I do...

HAEG: Ok. Well...
WOODMANCY: I'm not sure where this is going with you representing yourself.
HAEG: Ok and I don't – I guess I'm getting off track again also. I guess what I'm getting at is I didn't want you to hold it against me that I tried to recuse you. I just wanted you to know the – my reasoning's for it and not hold it against me for me asking to go on my own. I just want a fair shake out of the system. I want somebody that knows when I talk caselaw they know that I'm speaking the truth and –uh- -um- that you know. I guess I could try to go on and on and on and on and on -um- you know you know it – I guess how I do it is like with the seizure of my airplane I just want to – this is point why I think I should be allowed to go on my own. Is when they seized my plane I actually asked Trooper Glenn Godfrey and I think he's a Sergeant – that correct Sergeant? When I could get my plane back because I had clients coming the next day. And he told me you'll never get this plane back and then we hired Mr. Cole some days later and I asked him what can be done – "oh your plane gone for good – just gone" – I'm like wow you know I got all this – this business coming in. I got – I have a family to put food in the mouths of. It wasn't until 2 years later that I find myself that when a person is deprived of their property that is used to provide the livelihood for their family that they must – due process – must be afforded a hearing in days if not hours or due process itself is violated. They actually – that case US it was the Fishing Vessel American Eagle and I actually know that vessel because I've seen it in Homer a bunch of times – that made caselaw go to the Civil Rule 89 which deals with forfeitures – which was happened to all my equipment used to provide for my wife and my kids and it said that in 7 days if you are not pro – if you are – if – if the prosecution does not get a written state from you in 7 days forgoing your right to a hearing due process is violated and you get your stuff back. No one ever pointed out – I was

deprived of the way to provide for my family against my constitutional rights to due process and I asked for – if there was a way to do it – nobody said anything to me – not even my own attorneys. I found that on my own. They deprived me of my right to put food in my family's mouths for 2 years before they legally could. That's why I'm upset, that's why I'm angry. The State and my own attorneys and that's – they never found this I did. That's why I should be allowed to go. I'm finding stuff. I think a violation – a direct violation of my due process rights is a serious matter. I don't know what you people feel but my due process rights have been violated over and over and over and over again by my own attorneys lying to me when the State commits those violations. And I can prove it and prove it and prove it and prove it. My attorneys did nothing with it. But I'm sure goanna. Dave Haeg's goanna and that's why I need to be –uh- need to be allowed to go on my own because I'm the only one that's goanna point these out and I guess what do you think of that? Do you think I should have been deprived of my equipment or my property without the hearing guaranteed to me by constitution?

WOODMANCY: I – I think that that's a matter for appeal and a matter to be ruled somewhere else and you don't get to ask me questions Mr. Haeg.

HAEG: Oh I'm sorry but well...

WOODMANCY: You need to keep this in mind. You want me – you want to go forward yourself. How many times today have I explained to you that you can't ask Trooper Gibbens questions when he's not on the stand, you can ask other people questions, and you certainly can't question the judge?

HAEG: In considering a pro se application the court shall – and I'd like to stress that word shall - consider substance and disregard defects of form. To me that means that if I can get to here that means it doesn't matter if I forget to object because that's a defecet in form and you'll and however is doing this will look at the substance of my

arguments and no matter how I wish to present them you'll look at the substance and not at how I present them or my – my failings as an attorney. And that is where I'm headed and I am not goanna stop until I get there. And I am going to try to learn as best I can so I can get there. -Um- you know if I get there then my failings with the procedure or form fall away (air noise) and then it became – becomes a game in which Mr. Rom and I we lay our cribbage hands face up on the table and we don't get to try to outpeg each other through inuendo and words. It's then – then our arguments come head to head and his ability over me is reduced by a vast amount. Now we're pretty much maybe not on equal footing but we're pretty close and that is where I am going and that why I want to go pro se is because when I get here the nes- the necessity for a lawyer a lot of that falls away because it says the court shall consider and disregard defects of form that – that means that it says the court shall disregard defects of form. That's some pretty powerful stuff and that's where I'm headed because then we can go look down that rabbit hole. I want to see what's at the end of it. I want to see if – if my research and all the friends that I have read what I've read if we're all crazy. Maybe we are. I admit that. You know – what if put it this way. What if we're not? That's a very deep thought. What if me and everybody that I've showed this stuff to – what if we're not crazy? What if my own attorneys sold me out to the State and denied me all this – I mean isn't that worth a look into? Because if it happened to me I think I'm pretty intelligent – how many other people has it happened to? How long will it continue? You – we can't let that – you cannot let the possibility of that go unexplored. It isn't just me. A lot of the people that say "Dave you have – you must go on. It's for all of us. It's for your daughters Dave." You know – you know this isn't a very apt – this is an extreme example. You know there's a law that says you can only drive 55. You're doing 60 somebody pulls you over – a trooper. He puts you spread

eagle and maybe they've had a run in with your brother and they don't really like your family – while you're spread eagle they just flick a 5 pound bag of cocaine in the backseat of your car...
WOODMANCY: Mr. Haeg...
HAEG: Well...
WOODMANCY: ...you are so far out in the ozone. What has this got to do with you represetning yourself?
HAEG: I guess what I'm saying is and – I – and I – I tried to apolo – or tried to say that this is maybe far out but what if I did someone wrong and I think we were all there when I admitted doing something wrong. I have never told anybody I didn't do anything wrong. But what I got convicted of and sentenced to is so far above and beyond what should have happened that I had to look into how it could happen. Well I did something wrong I broke the speed limit but then a whole bunch of other people broke my constitutional rights to turn it into a vindictive witch hunt I believe. I mean I don't know maybe people were supposed to make names for themselves or whatever. I don't know the reasons why I really don't. Alls I know is what happened and what I have proof of and I want to go look down that rabbit hole. I'm goanna follow it till the end and that is – if I can't find a lawyer to help me do that and I'm intelligent enough to continue to learn and promise you Magistrate Woodmancy that I'll do what I can to learn and to continue to learn and so that right now you might have big reservations that I'm a crack pot, and emotional, and I'm not abil – not able to go. Well give me some – you know say "well he's on the border but he promised me that he'll continue researching and he get – in all likelihood he'll get better and if he's better then where he is now I'd be a little more happy about letting him go on his own." And that's all I ask. I just –uh- you know it's too big a – I – I've put too much into this to just throw it all away. I want to see what's at the end of the hole -um- because all my instincts are crying out and all the proof that I've seen declare that

there's something at the end of the hole that isn't right and I just want to get to the end of the hole and see what's there. And –uh- and I think I'm capable of doing it. I knowingly waive my right. I guess I'd like to reserve and you'd said that I guess if I waive my right I can't get another attorney but I guess I would take that up with the Court of Appeals saying that hey you know I found an attorney that I think to repre – I would look in to that. I'll find people that could you know maybe if I can't find somebody that can actively represent me maybe I can find someone who can sit next to me and advise me like you've suggested finding. I'll take advantage.
WOODMANCY: Mr. Haeg if you're allowed to go pro se in 6 months you're not goanna say "you know I'm not doing well or I found an attorney that will now do what I want and I want to go back to square 1" that won't be allowed you're correct.
HAEG: Ok.
WOODMANCY: I did say that and you did hear that correctly.
HAEG: Ok.
WOODMANCY: So you need to consider this...
HAEG: Yep.
WOODMANCY: ...before you cont...
HAEG: Ok.
WOODMANCY: ...You know before decision is made because you aren't goanna go back to square one again with the appellate court in 6 months or whenever. When – when you say "holy cow I'm losing this I got to get an attorney"...
HAEG: Ok.
WOODMANCY: ...be clear that the appellate court is not goanna go back to square one.
HAEG: Ok and I understand that but is it – is it – is it possible that they could allow me to have someone by my side that – to – like you had suggested?
WOODMANCY: It may be possible that I order that.
HAEG: Ok.

WOODMANCY: Yeah I mean there – there may be an – I'm you know it – there's a number of decisions that can be made...
HAEG: Ok.
WOODMANCY: And one – one of them could be that – that you could be allowed to proceed pro se provided you get assistance of counsel who at least helps you understand what you can and can't do and how you can and cannot proceed...
HAEG: Yep.
WOODMANCY: You could be denied your right to go pro se or you could be allowed to just go pro se flat out.
HAEG: Yep.
WOODMANCY: -Um- there's – there's a number of options that are available here but you're – you're greatest desire right now seems to me to pro se flat out and – and that is what we're here about...
HAEG: Yep.
WOODMANCY: ...that is what your motions for so...
HAEG: Ok yep. Well I didn't see any...
WOODMANCY: Are you done with your presentation?
HAEG: –Uh-
WOODMANCY: Are – are you...
HAEG: -Um- I guess I'd like to point out a couple points of law. Just that you know you had made a statement that this post conviction relief is something for the appellate court to –uh- to look at and it is supposed to be applied for in the court in which the defendant was convicted and so the appellate court has no jurisdiction over this whatsoever. -Um- I'd also like to point out that my motion with the plane and all that. You file that in the court in which the – the – the property was seized or which – in which the property may be used and that's here. That is not at the Court of Appeals. That all comes here and I've got those motions and I'm curious and I'm sure you will tell me that I have to have my attorney file them but it says the person aggrieved by property seized in violation of their

due process rights. It doesn't say it has to be the guy's attorney. I think it's almost a separate proceeding. I think that – that those laws were put on the books so that people that – that –uh- you know at some point realized what was going on could just walk into the court and I actually asked the – the Kenai Court House and they says Mr. Haeg you have a extremely valid point. We -um- the clerk there said that I see where you're coming from. That maybe you don't need an attorney cause it's a whole separate thing. Somebody aggrieved by a violation of their due process rights to seizures against due process can just go in and petition the court in which the stuff was seized or in which the stuff may be used. It's pretty straight forward. So that is why I sent you the stuff...

WOODMANCY: Well this was already done Mr. Haeg and denied. That motion's already made and denied.

HAEG: Ok by you or...

WOODMANCY: By Madame or by judge or then Judge Murphy who heard the case. You...

HAEG: Yeah but...

WOODMANCY: ...you appealed that to this...

HAEG: No.

WOODMANCY: ...court...

HAEG: No.

WOODMANCY: ...after your trial for the return. Yes and she denied it.

HAEG: That law was never brought – that law was never pointed out and she never made a ruling on it. She put it off until sentencing.

WOODMANCY: After sentencing there was an appeal.

HAEG: I had 7 days. I had 7 days.

WOODMANCY: Ok Mr. Haeg after sentencing there was an appeal for the return to for all of your sentence to be suspended pending a resolution on the appeal including the airplane and – and the guiding and it was denied and then you appealed to the appellate the court and what happened there?

HAEG: It – it was not appealed under the basis of that rule. It was a total different...
WOODMANCY: Well...
HAEG: ...it was appealed on the basis of being forfeited – you said when if you thinks in – in this rule you can use it. It's an entirely different format – entirely different jurisdiction holds sway over it. It – no one ever said that I never got a notice of a hearing.
WOODMANCY: Mr. Haeg – Mr. Haeg convince me to – I'm not arguing at this time...
HAEG: Ok.
WOODMANCY: Convince me that you can go pro se or let me know you're done.
HAEG: Ok.
WOODMANCY: I'm not goanna argue motions that were ruled on by other court. I'm not goanna argue them with you. That's it.
HAEG: Ok.
WOODMANCY: Ok?
HAEG: Ok -um- I don't think I have probably a whole lot more then I can say. –Uh- I just respectfully request that you consider the possibilities that I brought up very very carefully when you make your decision. Thank you very much.
WOODMANCY: Mr. Rom?
ROM: What's the difference between a forfeiture an in rem forfeiture proceeding and evidence seized pursuant to a search warrant in a criminal matter?
HAEG: An in rem seizure versus what?
ROM: Evidence seized pursuant to a search warrant in a criminal case.
HAEG: Evidence seized in a criminal case can be seized as evidence yet if it is intended to be forfeited at any time in the future you must have a civil proc – a civil – according to civil rules you have to – that govern forfeitures you have to have a hearing in days if not hours and that is in a criminal context they can seize the stuff as evidence but if the stuff

is used – is property that's used to provide for your livelihood it then transfer over on to the civil rules as to when the hearing may be taken place. And any evidence that is associated with that equipment or that property can be photographed and documented but the equipment and property itself that's used to provide for the livelihood can be bonded out or must be given back or at least a hearing given. So although you may seize the stuff as evidence you then have to gather your evidence from that property and then provide the – the guy an opportunity under civil rules because the forfeiture proceedings are all civil. They may start from the criminal but there's not forfeiture proceedings that are addressed in Alaska law under the criminal statute – they all comes under civil rule 89...

TAPE #6 SIDE A

ROM: ... they take that gun from the guy. Do you think they're goanna give him that gun back ever?
HAEG: If that guy...
ROM: Yes or no? Do you think the police are ever – ever goanna give that gun back to that guy?
HAEG: If that guy proves that gun is used to provide for his family - if they don't they just broke the constitution.
ROM: All right let's say he shoots a rabbit every day out of his back yard with that gun...
MADAME CLERK: Magistrate Woodmancy?
HAEG: Ok.
WOODMANCY: Hold – hold on I think the clerk said something. Madame Clerk did you speak?
MADAME CLERK: Yes were about to have a tape change.
WOODMANCY: Ok how we doing Madame Clerk?
MADAME CLERK: We're back on record in the State of Alaska District Court Aniak at – hang on a minute.
WOODMANCY: Ok Mr. Rom go ahead.
ROM: Thank you. Ok I want to follow your logic here...
HAEG: Ok.

ROM: ... on this forfeiture issue. So do you think that under any circumstances the police are goanna give that gun back?
HAEG: The police may not think so but due process might say that they do.
ROM: Ok the murderer is entitled to a hearing to see if whether he can get that gun back within 7 days, according to your research?
HAEG: Yep if that prop[erty] – if any property is used to provide for the livelihood and actually any property not even provide – ok let me rephrase that. Any property according to the U.S. constitution and the U.S. Supreme Court decisions have to have a hearing. Ok in Alaska if it has to do with the livelihood in days if not hours. So if that gentleman used that gun to put all the food on the plate for his family he would have that gun back or the Troopers would go to jail violating his due process rights.
ROM: Have you ever heard of that happening?
HAEG: Nope. You know what...
ROM: Do you think – do you think you're the first person to ever thought of this?
HAEG: I think I may be the first person to find it and apply it, yes. But may – may I also expound upon that?
ROM: You – you still think – no.
HAEG: Ok.
ROM: You still think you're absolutely positive that your legal theory is valid?
HAEG: You took it to one extreme.
ROM: Do you think that that legal theory is valid, now?
HAEG: It is absolutely so valid it's unshakable.
ROM: Ok thank you. Now let me ask you this. Let's assume you're allowed to proceed pro se in your appeal. What do you want to achieve?
HAEG: I want a fair trial.
ROM: What do you want from the Court of Appeals?
HAEG: Fair trial.
ROM: You can't get a trial in the Court of Appeals. What...

HAEG: They can...
ROM: ...do you want...
HAEG: ...they can remand it for a new trial.
ROM: Ok so you...
HAEG: So they can get...
ROM: ...want a remand...
HAEG: So they can get...
ROM: ...for – you want a remand for a new trial?
HAEG: Well or – well actually the way things have went I would like it to be reversed with prejudice or dismissed with prejudice is what I guess – if you gave me my wish list dismissed with prejudice and return all my equipment and all my property.
ROM: What are you going to ask the Court of Appeals to do for you? Not a wish list. What do you intend to ask the Court of Appeals – what relief do you intend to seek from the Court of Appeals if you're granted pro se status?
HAEG: Well at this point I've been reading and I came up with this –uh- post conviction relief and I think I'm goanna try that before I go – I might ask – I'm goanna – if I get – if I go pro se I'll probably file that immediately with the court in which I was convicted. I think I was convicted right out there. And then I ask the Court of Appeals to stay proceedings pending the outcome of Post Conviction Relief.
ROM: Ok.
HAEG: And the reason that you...
ROM: Now I thought you were in Post Conviction Relief proceedings – isn't that what you just testified to a minute ago? You read 12.72.010...
HAEG: Yeah.
ROM: ...and you said here you are – you're in Post Conviction Relief?
HAEG: Well I mean will you – would you – would you classify this as proceedings?
ROM: Do you think you're in a PCR proceeding?
HAEG: Been convicted and this is a proceeding. So there's – there's a hearing called that Post Conviction Relief.

ROM: Have you asked for a hearing for Post Conviction Relief?
HAEG: Not yet but I'm getting ready to.
ROM: Ok you're getting to but you think you're in a hearing related to it?
HAEG: What I'm saying is -um- ...
ROM: Are you in...
HAEG: ...I'm not in the actual hearing that's in the book but this meets that definition, yes but this is not what's talked about in the book. But if you describe Post Conviction Proceeding. You could say post conviction hearing. This is a post conviction hearing. I've been convicted. This is after conviction.
ROM: Ok.
HAEG: It's pretty...
ROM: Now...
HAEG: ...pretty simple concept.
ROM: ...take a look at Exhibit 1 if you would please.
HAEG: Do we have Exhibit 1 somewhere? I think it's a big pile of their evidence. Ok.
ROM: This is what Mr. Robinson filed on your behalf in the Court of Appeals? Well yeah in the Court of Appeals to state what the appeal was going to be about – is that right?
HAEG: It appears like it yes.
ROM: Ok. If you're granted pro se status do you intend to proceed on number 1?
HAEG: Well I need to...
ROM: Yes or no?
HAEG: Yes.
ROM: On number 2 do you intend to proceed under that?
HAEG: Yep.
ROM: Ok and number 3?
HAEG: Yep.
ROM: And number 4 do you intend to proceed under that?
HAEG: Sure...
ROM: Ok.
HAEG: ...may I – I can't say (indecipherable)...

ROM: So – so you want to preserve these Statements of Points on Appeal? You don't want to abandon them?
HAEG: Well what I planned on doing is I feel they are absolutely worthless but since the appeal started you can unstop it. And that's my dilemma.
ROM: You can tell the court you don't want to address these points on – on appeal. You can select the points on appeal that you brief. You understand that don't you?
HAEG: I understand that my appeal is going and if you don't address them they're not considered.
ROM: Right.
HAEG: So I wasn't going to say that I don't want to address these I just wouldn't probably address them. If I – if my research I find that there's some reason I should I probably would but if I don't address them the Court of Appeals just brushes them out of the – out of the way.
ROM: Ok do you intend to address these or not?
HAEG: I may and I may not.
ROM: Ok. Look at Exhibit 2.
HAEG: Yep.
ROM: Do you intend to address these points on appeal?
HAEG: I don't think so.
ROM: Ok.
HAEG: Or I may change my mind.
ROM: Describe if you will the hearing before the Court of Appeals as you...
HAEG: And actually can I look at this a little closer here?
ROM: Let's move on.
HAEG: Ok.
ROM: If you will describe the hearing before the Court of Appeals as you imagine that it will be.
HAEG: Imagine what?
ROM: The hearing you will get in front of the Court of Appeals – what do you thinks goanna happen?
HAEG: Well number 1 you don't get a quote a hearing – you have to file oral arguments, or I file a brief, you get X amount of time to respond, I get X amount of time to

respond to your response, and any time in there we can ask for oral arguments and at that time the clerk's of the Court of Appeals said you know what you ask for them and you don't really have to make your arguments. They said that is an opportunity for the judges of the Court of Appeals to ask you questions about their concerns of what's going on in your case. And that was pretty much – I wasn't maybe lay on a whole lot I was just goanna sit there and say Your Honor I'm ready for questions.
ROM: Ok so you want to have oral argument to participate in?
HAEG: Mm hmm.
ROM: Do you think it will advance your case if you orally argue your case to the Court of Appeals in person?
HAEG: Absolutely.
ROM: You'd do better then – a better job then an attorney would?
HAEG: There is no possible way I would do as good as an attorney that represented my interests but I'll do a whole lot better then an attorney that's not representing my interests.
ROM: So you understand you won't get to present evidence in the Court of Appeals?
HAEG: Correct and that's why I am not going to file ineffective assistance of counsel with the Court of Appeals because through my research I've determined that I file an ineffective or a Post Conviction Relief among – claiming among other things ineffective assistance of counsel I get to just say hey man I didn't get a fair shake and here's why there's no – they – the court has to – to look at substance and disregard defects in form. There can be evidentiary hearings, there can be –uh- witnesses deposed, there can be all kinds of stuff that can –uh- perfect the record that the Court of Appeals cannot do. So I can – and then the district court it's a beautiful thing because essentially you get to bring in evidence from things that happened outside of the record like I did. All my rule 11 agreements – all of that –

all of what my attorneys did. All of that gets to come in. If it goes to the Court of Appeals they can't look at any of that but then – then if I don't like what the district court does the beauty of it is then – then I can bring that to the Court of Appeals attention and they can look at whether the district court made the proper decision and then they have the tools to do their job because right now they said rarely will – can a – an appeal alleging ineffective assistance of counsel be made directly on direct appeal because the record was not preserved for that. Most of the actions or a lot of times most of the actions that would lead up to ineffective assistance of counsel happened outside the record.

ROM: Ok that's my question. What is it that you want to appeal as a result of your trial – on your direct appeal that is filed with the Court of Appeals – what do you want to appeal?

HAEG: Well I don't know I haven't looked at it yet. Alls I know is I don't want to forgo that opportunity. I don't want to give up that opportunity. What happened with Mr. Robinson is he rushed me through everything and (air noise) right into the appellate process and all of a sudden it starts. If it didn't you know – once it started he – I feel he should have just said all – you know during court is when the time all this stuff should have came up before I ever – the trial ever happened or during trial or before sentencing. Now it's – it's almost too late. The jurisdiction passed from here to the Court of Appeals yet – yet what happened they're not looking at.

ROM: I understand that.

HAEG: Because they don't have it...

ROM: That's my question.

HAEG: So...

ROM: We – I understand you...

HAEG: But...

ROM: ...want to go on Post Conviction Relief...

HAEG: But what...

ROM: Hold on – hold on...
HAEG: Ok.
ROM: I understand you want to go on Post Conviction Relief...
HAEG: Ok.
ROM: And I understand you want to do that in the trial court.
HAEG: And I want to preserve my right to appeal because if I let that go that's gone forever.
ROM: Ok. The Court of Appeals is goanna take this case back from remand – next week on the 21st...
HAEG: Right.
ROM: It goes back to the Court of Appeals...
HAEG: yep.
ROM: ...they're goanna issue a decision on when your brief is due.
HAEG: Yep.
ROM: Are you ready to file your brief?
HAEG: No.
ROM: Ok.
HAEG: But I'm sure they'll give me time to file a brief?
ROM: How much time do think you're goanna need?
HAEG: I don't know I haven't made that decision.
ROM: Cause I'm not goanna sit around forever. I'll oppose a request.
HAEG: You...
ROM: If it unreasonable.
HAEG: You have – you've been opposing my motions for quit a while. You opposed Mr. Osterman coming up.
ROM: Actually – actually...
HAEG: I don't have any problem with you doing your job.
ROM: ...actually I didn't. All of the requests for continuances of time to file the brief have been non-opposed. The briefs were due last winter or early in the year or something like. Mr. Robinson has asked for –uh- extensions...
HAEG: Yep.

ROM: ...they were non-opposed and they were granted, right?
HAEG: Correct.
ROM: Ok the last brief was due – one was due on the 2nd of June – there was a continuance requested then, that wasn't opposed, but there's a point...
HAEG: Right.
ROM: ...where we need to get on with it.
HAEG: No there isn't.
ROM: There isn't?
HAEG: There's a point – there's a point when my fundamental right – my – when my constitutional right to a fundamental right to a fair trial that's what's important here.
ROM: You don't think...
HAEG: All these procedural questions takes - takes...
ROM: Ok you don't think that the State of Alaska has an interest in this case do you?
HAEG: Oh they have a huge interest in it.
ROM: Ok.
HAEG: I understand that. But their interest - is this case costing you money? I would assume not. It's costing me a tremendous amount of money. The longer it goes on the person it hurts is me. I have the biggest interest in seeing this resolved quickly. You don't think – you cannot believe for one minute that I want to see this go for 10 years. But I have a right – when my attorneys screwed up...
WOODMANCY: All right we're getting into a debate here...
HAEG: Ok.
WOODMANCY: ...gentlemen. Lets get in...
HAEG: Ok.
WOODMANCY: ...back into question and answer Mr. Haeg.
ROM: All right. Take a look at Exhibit 3.
HAEG: Now I'm looking at it.
ROM: This is a – didn't you file this? This is the motion to proceed pro se.

HAEG: Yep this is the motion why we're here today I believe.
ROM: Now also attached to this document a couple of pages later there's something at the bottom that's marked exhibit 2. This is a letter you wrote, right? May 23rd 2006 you see that?
HAEG: Yep.
ROM: All right it starts out a sworn affidavit is required from you for the Court of Appeals in David Haeg's case number A-09455. Mr. Haeg what authority do you have that requires an affidavit from opposing counsel?
HAEG: -Um- in many of the Court of Appeals decisions they have said that although they may not take evidence and testimony affidavits from all parties concerned are appropriate and needed to determine -um- the validity of claims and they either – they said that you either provide affidavits or you provide a reason why you couldn't get them.
ROM: What case are you referring too?
HAEG: Huh?
ROM: What authority – what case are you referring to that says that or what court rule?
HAEG: –Uh-
WOODMANCY: And what I'm interested in is what Court Rule allows you to depose opposing counsel?
HAEG: Well I looked at – and I looked for that court rule I didn't find one.
ROM: So...
HAEG: Yet – yet the – the Court of Appeals -um- Jackie do you remember what they're the ones that are still on the wall up against...
WOODMANCY: Mr. Haeg – Mr. Haeg...
HAEG: Ok.
WOODMANCY: ...you're on the witness stand you don't get to ask anybody else anything...
HAEG: Ok.
WOODMANCY: ...for assistance...

HAEG: All's I – All's I know is I could give you the cases I think may have been –uh- oh State versus Arnold not sure of that one but there are – there were – most of the ineffective assistance of counsel claims handled by the Court of Appeals – the Court of Appeals denied most of them because the applicant did not supply affidavits from counsel.
ROM: You understand that what you're talking about is Post Conviction Relief – not an appeal?
HAEG: It was in the Alaska Court of Appeals...
WOODMANCY: So are you – are you done?
HAEG: Yes.
WOODMANCY: Mr. Rom do you have anything else?
ROM: No.
WOODMANCY: Ok. Now Mr. Haeg you called yourself do you have anyone else?
HAEG: No.
WOODMANCY: Ok Mr. Rom?
ROM: No. No. No.
WOODMANCY: Ok. This is – for me I read a lot of stuff myself Mr. Haeg. I've read a lot of Supreme Court rulings. I've read a lot of the things that you were talking about. I've read a lot of the things that you've done and I have read everything that has come in -um- since the case come to me and – and previous stuff also. But I've read everything that I could in this case. I – I think that some of the answers in this case are pretty easy but I want to go back to my original instructions to you and what I read because I think some of these points are extremely important. I do believe that you can make a knowing, voluntary, and intelligent waiver to represent yourself. I don't think that you necessarily have to have a college education. I don't necessarily think that you have to attend law school to represent yourself.
HAEG: Ok.
WOODMANCY: ...want you to really hear this. "A defendant has the right to represent himself. The defic -

decision by defendant however to exercise this right is almost always a bad one. The cases seem to recognize the right of the defendant to make a bad decision. They permit him to choose to commit judicial suicide by defending himself. The court has the duty to make sure that the – the - the defendant who wishes to represent himself is fully aware of the dangers of self representation and the benefits of having an attorney. Because the decision by the defendant to exercise this right is usually such a bad decision and is generally so disruptive to the proper function of the judicial process the trial court must make sure that a defendant who chooses to represent himself knows what he is doing. The trial judge should attempt to discourage the defendant from representing himself. If he insists however the defendant must be allowed to represent himself if he is capable of knowingly and intelligently waiving his right to counsel and had has certain minimum competence to conduct a defense." There's two points in that that concern me. One is when the statement is "a bad decision is generally so disruptive to the proper function of the court process". I believe we've seen that generally fairly consistent throughout the day. You – you know I mean when – when you talked about gaining credibility with the co – court this is about as the informal process you are ever goanna be involved in. This is absolutely the most important thing. -Um- and – and yet I can't keep you on track when you know – raise my hands, remind you repeatedly. The second thing is "If he insists however the defendant must be allowed to represent himself if - if he is capable of knowingly and intelligently waiving his right to counsel and had has certain minimum competence to conduct a defense." And the minimum competence is what I'm concerned about. Is your emotional involvement in this case overrides your brain. You want so much to present issues that are a fair amount of importance to you but they're not on point or they're not on track with what's going on. That in – in a normal proceeding you'd be just

shut down in a (indecipherable). You wouldn't be allowed to proceed. You would get constantly -um- cautioned by the court and possibly sanctioned. You're goanna be representing yourself via attorney and the 3rd or 4th time that a – an appellate court judge says stay on track or Superior court judge or anybody else says stay on track and you don't they're goanna say "you know you're too disruptive to this process. We're not goanna continue. It's over." And I'm concerned that's your emotions – not your intelligence that is – is goanna be your downfall. -Um- I'm goanna took – delay the decision on whether or not you can represent yourself for 30 day. And in that time I'm goanna order an evaluation. If you get evaluation, and you talk to a professional psychologist or physiatrist it'll be assigned by Alaska Psychiatric Institute – to see if you can proceed with this and I'm not talking about to see if you are crazy. I'm – we're not talking about that.

HAEG: Ok.

Supreme Court, U.S.
FILED
081108 FEB 23 2009
OFFICE OF THE CLERK

121

NO. (2)

IN THE SUPREME COURT OF THE UNITED STATES

DAVID S. HAEG, Petitioner

V.

STATE OF ALASKA, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE ALASKA COURT OF APPEALS

PETITIONER'S APPENDIX
VOLUME 2 OF 2 - (APPENDIXES GG-OO)

DAVID S. HAEG
Pro Se

P.O. Box 123
Soldotna, AK 99669
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Appendix GG-OO

APPENDIX GG

STATE OF ALASKA
DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF BEHAVIORAL HEALTH
ALASKA PSYCHIATRIC INSTITUTE
ALASKA RECOVERY

FILED
In District Court
State of Alaska
at McGrath

August 24, 2006

Honorable David Woodmancy
District Magistrate
District Court for the State of Alaska
PO Box 147
Aniak, AK 99557

Date 8-31-06
"s/"
Magistrate/Clerk

RE: Haeg, David
DOB: 01/19/66
API #: 11111
CT REF #: 4MC-04-024 CR

Dear Magistrate Woodmancy:

Pursuant to your Order for Examination for Competency to Continue Legal Proceedings and capability of conducting a legal defense without counsel, the following report is prepared. Mr. Haeg was evaluated as an outpatient in the psychological testing area at API. The warnings concerning limited confidentiality, and the fact that copies of my report would be distributed by your chambers was explained to Mr. Haeg. The defendant consented to participate in the examination.

IDENTIFYING DATA: Mr. Haeg is a 40-year-old Caucasian male who lives near Soldotna. He has worked for

more than 20 years as a hunting guide. He is married, has children and completed high school.
PERTINENT HISTORY: Mr. Haeg has been charged with 11 counts of violating state game regulation, and is in the process of appealing the court's earlier decision regarding these charges.

CURRENT PSYCHIATRIC CONDITION: Mr. Haeg does not have a mental disease or defect, has not been prescribed medications to treat a mental health condition, and is not receiving mental health therapy at this time.

ISSUES RELATED TO COMPETENCY TO STAND TRIAL: Mr. Haeg was interviewed extensively regarding his knowledge of the charges against him, his perception of the seriousness of those charges, his understanding of possible legal alternatives available to him, and his understanding of the process involved with this court case. He was able to exhibit a very clear understanding of not only the charges against him, but of the various legal alternatives that he could select from. He is also able to present a logical argument for self representation, and is cognizant of the challenges that he may face in doing so. He did state that he has begun to look for legal consultation, and presented arguments in regards to pitfalls of utilizing a lawyer who actively practices in Alaska at this time. His mental status examination does not suggest any deficits in memory, comprehension or reasoning skills. His level of intellectual functioning falls in at least the average range, and may be somewhat higher than average based on his understanding of vocabulary, and ability to reason and comprehend abstract concepts.

It is, therefore, my professional opinion that Mr. Haeg may be found Competent to Continue Legal Proceedings at this time. He also demonstrates the mental capability to

conduct his own defense, and is clearly aware of the pros and cons of making such a choice.
If I may answer additional questions or be of further service, please contact me at 269-7100.

Respectfully,

"s/"
Tamara Russell, Psy.D., MHC IV
Licensed Psychologist (AK#538)
Forensic Evaluator
Alaska Psychiatric Institute

TR/pal/MEMOLTR/23119F
D: 8/24/06
T: 8/25/06

APPENDIX HH

September 18, 2006 – In the District Court for the State of Alaska Fourth Judicial District at McGrath. Haeg v. State, Case No. 4MC-S04-24 CR.

MEMORANDUM OF LAW

I. Factual and Procedural History

In 2004 the Alaska Department of Fish and Game (ADF&G) managed a Predator Control Program in the McGrath area. Permits were issued for certain game management subunits to allow wolves to be taken from the air with the use of an airplane. David Haeg applied for and received such a permit. In March 2004, David Haeg and Tony Zellers, both of whom were licensed under Title 8 as Alaska Big Game Hunting Guides, took a number of wolves with Zellers shooting the wolves they encountered from which Haeg piloted.

In early March 2004, Alaska State Trooper Brett Gibbens learned that Haeg and Zellers may have been taken wolves outside of their permitted area. Over the course of the next several months Gibbens investigation showed that Haeg and Zellers had taken a number of wolves outside of the legally permitted area and provided false information to ADF&G claiming the wolves were in a legal area. Eventually, search warrants were executed and the aircraft was seized. In June 2004 both hunters were interviewed by the troopers and admitted that they knew nine wolves were shot from the airplane outside the permit area. Both men were charged with various criminal counts. Zellers case resolved by way of a plea agreement, and Haeg proceeded to jury trial where he was convicted. On September 30, 2005, he was sentenced for five counts of

Unlawful Acts by a Guide: same day airborne in violation of AS 8.54.720(a)(15), two counts of Unlawful Possession of Game in violation of 5AAC 92.140(a), one count of Unsworn Falsification in violation of AS 11.56.210(a)(2), and one count of Trapping in a Closed Season in violation of 5AAC 84.270(14). He filed a timely Notice of Appeal in the Court of Appeals.

Appellant initially retained attorney Brent Cole to represent him. After a failed plea negotiation, but prior to trial, appellant fired Mr. Cole and obtained representation by attorney Arthur S. Robinson. Mr. Robinson represented appellant through trial and began working on the appeal. Appellant fired Mr. Robinson and retained the services of Mark Osterman to perfect the appeal. Once the brief was substantially completed and, appellant reviewed it, he fired Mr. Osterman. Appellant attempted to waive the assistance of counsel and to proceed pro se. The matter was remanded by the Court of Appeals for hearing which occurred in McGrath on August 15, 2006, to determine whether he and intelligently waive his right to counsel and whether he is competent to represent himself on appeal.

I. Legal Authority for Pro Se Status

A criminal defendant has a right to waive counsel and represent himself. *McKaskle v. Wiggins*, 465 U.S. 168, 104 S.Ct. 944,79 L.Ed.2d 122 (1984); *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1 975); *McCracken v. State*, 518 P.2d 85, 90-9 1 (Alaska 1974); *Lampley v. State*, 33 P.3d 184, 189 (Alaska App. 2001) (trial court properly denied defendant's request to represent himself based in part, upon repeated threats to harm trial judge). In order to be granted pro se representation, a defendant must clearly and unequivocally express his desire to represent himself. *Faretta*, 42 U.S. at 835, 95

S.Ct. at 2541. This constitutional right applies at trial but not to appeals. *Martinez v. Court of Appeals of California Fourth Appellate Dist.*, 120 S.Ct. 684, 692, 528 U.S. 152 (2000) (a criminal defendant has no federal constitutional right to represent himself on appeal). As the *Faretta* court recognized, the right to self-representation is not absolute. The defendant must "voluntarily and intelligently" elect to conduct his own defense, 422 U.S., at 835, 95 S.Ct. 2525 (quoting *Johnson v. Zerbst*, 304 U.S. 458,464-465, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938)), and most courts require him to so in a timely manner. He must first be "made aware of the dangers and disadvantages of self-representation." 422 U.S, at 835, 95 S.Ct. 2525. A trial judge may terminate self-representation or appoint "standby counsel" – even over the defendant's objection – if necessary. *Id.* 834 n. 46, 95 S.Ct. 2525. The Supreme Court has further held that standby counsel may participate in the trial proceedings, even without the express consent of the defendant, as long as that participation does not "seriously undermin[e]" the "appearance before the jury" that the defendant is representing himself. *McKaskle v. Wiggins*, 465 U.S. 168, 187, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984). Additionally, the trial judge is under no duty to provide instruction on courtroom procedure or to perform any legal "chores" for the defendant that counsel would normally carry out. *Id.* at 183-184, 104 S.Ct. 944. Therefore, the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer. 120 S.Ct. at 691.

Courts disfavor self-representation. Not even the *Faretta* majority attempted to argue that *pro se* representation is wise, desirable or efficient, and some waive his right to a fair trial. 120 S.Ct. 691 n.9. The Supreme Court has found, that although the right to defend oneself at trial is "fundamental," representation by counsel

is the standard, not the exception. *Patterson v. Illinois*, 487 U.S. 285, 307, 108 S.Ct. 2389, 101 L.Ed.2d 261 (1988) (noting the "strong presumption against" waiver of right to counsel). The Supreme Court recently noted that "a *pro se* defense is usually a bad defense, particularly when compared to a defense provided by an experienced criminal defense attorney." 120 S.Ct. at 691.

Given this strong bias against *pro se* representation, the waiver of the right to counsel is not unlike a change of plea. In making these determinations, a trial court must also advise a defendant of his right to counsel, the importance of having counsel, and damages of proceeding without counsel. *Evans v. State*, 822 P.2d 1370, 1374 (Alaska App. 1991). Not only must the trial court explain in detail the advantages of legal representation, but it must be satisfied that the defendant understands those knowing and intelligent waiver, the Court of Appeals will reverse a conviction of a *pro se* defendant. *McIntire v. State*, 42 P.3d 558, 562-63 (Alaska App. 2002) (reversing conviction for inadequate inquiry). [1]

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[1] In *Gladden v. State*, 110 P.3d 1006, 1009-11 (Alaska App. 2005). Gladden was charged with the fairly uncomplicated charge of driving on a suspended license. He watched the court system video which "explained the benefits of counsel in general terms" and the trial judge actually gave him copies of United States Supreme Court opinions, including the landmark opinion of *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938) ("the obvious truth that the average defendant does not have the professional legal skill to protect himself when [ ] the prosecution is presented by experienced and learned counsel.") The court of appeals concluded that, "[tlhe record suggests that Gladden understood the value of an attorney, at least in general terms." 110 P.3d at 1010. In fact, Gladden insisted on representing himself-arguing that Alaska-licensed "attorneys" were not the same as "counsel" guaranteed to him by the Sixth Amendment. This argument itself certainly suggested that Gladden had a grasp of the significance of the right he was waiving. The case was not complex, and the prosecution's entire case consisted of a certified copy of his DMV record

These advisements are critical to establishing a valid waiver. They must include an explanation of the function of defense counsel, e.g., conduct *voir dire* to ensure selection of impartial jury, cross-examine state witnesses, object to inadmissible-evidence, call and examine defense witnesses, and argue the case to the jury. And they must also include an explanation of the dangers of self-representation; it is not sufficient for the trial court to simply advise a defendant that it would be foolhardy to proceed without counsel. The purpose of this inquiry is "so that the record will establish that '[the defendant] knows what he is doing and his choice is made with eyes open.'" James, 730 p.2d at 814 n.l (quoting, I ABA Standards for Criminal Justice § 3-3.6 commentary at 6.39-40 (2nd ed. 1982)), *modified on reh'g*, 739 P.2d 13 14 (Alaska App. the criminal justice system, although a factor is not an adequate substitute for these explanations. *McIntire*, 42 P.3d at 562 (pro se defendant had been previously been convicted of seven misdemeanors and a felony, had viewed the court system video many times; and was assisted by two paralegals at trial; his experience with criminal justice system did not cure judge's inadequate inquiry).

The proper standard of review of a trial court's findings regarding waiver of a constitutional right is whether the trial court's finding of waiver is supported by substantial evidence. *Walunga v. State*, 630 P d 527, 528 (Alaska 1980). Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a question of fact to be determined in light of the totality of the circumstances. *James v. State*, 730 P.2d 811, 817 (Alaska App. 1987), (Singleton, dissenting), *modified on*

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and the testimony of the officer who saw him driving. Yet, the court of appeals reversed, holding that the trial court's inquiry was inadequate, and too general. *Gladden*, 110 P.3d at 1010.

reh'g, 739 P.2d 1314 (Alaska App. 1987) (*citing Maynard v. Meachum*, 545 F.2d 273,277-79 (1st Cir. 1976)). The Alaska Supreme Court requires that the trial court first establish that the defendant can represent himself in a "rational and coherent manner" and then determine whether "the prisoner understands precisely what he is giving up by declining the assistance of counsel" before allowing the defendant to appear pro se. Evans, 822 P.2d at 1373 (*citing McCracken*, 5 18 P.2d at 9 1). The trial judge must explain the advantages of legal representation in "some detail." Evans, 822 P.2d at 1373 (citing McCracken, 51 8 P.2d at 92). The record must reflect a clear waiver of the right to counsel. Evans, 822 P.2d at 1373 (citing, *O'Dell v. Anchorage*, 576 P.2d 104, 108 (Alaska 1978); *Smith v. State*, 65 1 P.2d 1 19 1, 1 194 (Alaska App. 1982)).

The court must hold a hearing to determine if a defendant is competent to represent himself and whether he waives his right to counsel. Burks v. State, 748 P.2d 1178, 1180 (Alaska App. 1988). Even if the court finds that a defendant is competent to represent one's self and makes a knowing, intelligent, and voluntary waiver of the right to be represented by counsel, the court can still deny the defendant's request to proceed pro se. If it appears that the defendant would be unable to obey the court's orders or if the court finds it would be necessary to require the defendant to be represented by counsel in order to regulate courtroom decorum, the motion should be denied.

Before a trial court allows a defendant to represent himself, it must determine whether, (1) the defendant is competent to waive his right to counsel, (2) he does in fact knowingly and intelligently waive that right, and (3) the person is minimally competent to represent himself. Ramsey v. State, 834 P.2d 81 1, 814 (Alaska App. 1992). The court must be satisfied with two things: that the

defendant can represent himself in a "rational and coherent manner," McCracken, 5 18 P.2d at 9 1, and that he "can conduct his defense without being unusually 829 P.2d 1201, 1205 (Alaska App. 1992). Self-representation may be defined if the defendant clearly demonstrates an unwillingness to comply with rules and regulations. *Burks v. State*, 748 P.2d 1178, 1181 n. 1 (Alaska App. 1988).

In Gargan v. State, 805 P.2d 998, 1000 (Alaska App.), cert. denied, 111 S.Ct. 2808 (1991), the court noted that the defendant may be required to be represented by counsel. In Gargan, the court found that where a defendant was unable to obey court orders, or unable to manage his own case within the rules of evidence and the general procedure of an orderly courtroom, co-counsel status may be denied. Gargan, 805 P.2d at 1001. Gargan was charged with solicitation to commit perjury and tampering with evidence when he attempted to manufacture evidence to exculpate his son who had been charged with burglary. At the joint trial Gargan represented himself while his son was represented by the public defender. Gargan included objectionable statements and violated a protective order in his opening statement. The public defender representing his son moved to sever the trial and for a mistrial as to the son. The motions were granted and the court required Gargan to be represented by a counsel at a new trial before a new jury because of his inability to focus his arguments or obey court orders. The Court of Appeals found that the trial court did not abuse its discretion. *Id.*

Therefore, there is clear authority to permit this court to exercise it discretion and deny *pro se* status for appellant if the court determines he is unable to obey court orders or present his defense in coherent manner. *Id.*

III. Legal Argument

At hearing on August 15, 2006, it quickly became apparent that Mr. Haeg is not competent to undertake pro se status. While he may be able to knowingly and intelligently waive his right to an attorney, he cannot control his conduct, nor can he provide a coherent strategy for his defense. He repeatedly failed to comply with clear directions from the court.

The hearing began at 11 :00 a.m. and ended at 10:00 p.m. With a number of short breaks, a short lunch break, and a one and a half hour dinner break, it is estimated that more than eight hours of testimony was taken. During this lengthy testimony it was apparent that the appellant could not stick to the issues before the magistrate. His inability to focus on a single issue without getting sidetracked into collateral matters is a clear indication he will not be able to address proper points on appeal. He could not describe what points he would brief on appeal, if any.

On a number of occasions the appellant became argumentative with the judicial officer. Throughout the hearing, when objections were sustained, he continued to argue for a different outcome. While his persistence may be appropriate in a different forum, his conduct showed that he could not accept the authority of the court, even when given a clear directive.

He does not understand legal strategy, legal argument, and basic legal principles and procedures. For example, he said during the hearing that he did not understand that he could make objections, or that he could be a witness for himself at a hearing that was brought by his own motion. He claimed he could read the entire book of court rules in a matter of days and understand it well enough to proceed without assistance of counsel. He was

confused by the distinction between direct examination and cross examination, and could not distinguish import procedural differences between the two. He does not know when to proceed with a direct appeal post conviction relief. He thought the hearing on whether he was competent to represent himself was a post conviction relief proceeding. Any legal argument he furthers in the Court of Appeals is highly likely not to be presented coherently.

To complicate matters further, his lack of legal understanding combined with his efforts to learn sufficient substantive and procedural law to enable himself to proceed without assistance of counsel, has given him a distorted impression of which rules apply to a given situation. Frequently he would take a statement from a case or the rules out of context and try to apply it to a wholly inapplicable situation. For example, appellant recited a portion from Criminal Rule 35.1 (f) (1), which reads: "in considering a pro se application the court shall consider substance and disregard defects of form," but without considering the remainder of the sentence indicating the burden of proof and persuasion, he argued for the far broader principle that in any post conviction proceeding (including, in his mind, is direct appeal), form is totally unimportant and that only substance mattered. He stated that form "falls away." In another words, he is prepared to construe a part of a sentence outside of its context to enable him to represent himself in the Court of Appeals without being subject to the normal procedural requirements. This can only lead to a chaotic presentation which will be entirely disruptive to the legal process. As another example, under subsection (g) of the same rule, he understood that the "court may receive proof by affidavits, depositions, oral testimony, or other evidence." Because he was confused by the distinction between post conviction relief and an appeal, he sought affidavits from

approximately twenty or more persons, including opposing counsel. At least one of the affidavits he sought contained a list of 200 questions he wanted answered. He has inappropriately filed a number of motions in the Court of Appeals for 1) evidence and discovery, and 2) to compel a witness to testify on his behalf. He does not understand enough of the legal process to effectively present a coherent appeal.

The defendant is too emotionally involved in his case to represent himself, even at a minimal level. He admitted that he is extremely angry and he got emotional several times during the hearing. The criminal case against him has unquestionably affected his emotional state and it is clear that it is a paramount issue in his life. Whatever reasons for this may be, his emotional involvement prohibits him from sometimes acting in his own best interest. As indicated above, even when directed to do *something or to not do something*, he will persist because he is unable to control his emotions. But it also affects his reasoning. Because the case is so important to him, he is willing to bend the rules or not follow the rules to follow a particular course he believes is going to be more effective. The hazard posed by this disorganized course of action is that he will pull from the civil rules, rather than from the appellate rules, which he thinks it will give him an advantage or an argument that he couldn't otherwise have. He has filed motions while represented, even when told not to do so. He cites cases out of context when he feels the point he wants to establish can be found in that case, even when it is not. He does not appreciate the order in the law the rules are designed to maintain.

Unfortunately, because the defendant will rationalize or justify inappropriate conduct, he will put matters before the court that should never be there. For

example, in his Motion for Reconsider of Stay of Guide License Suspension Pending Appeal he filed in the Court of Appeals, identified as Exhibit 8 in the August 15th hearing, he discussed a confidential proceeding he knew he was not to disclose. In his Motion to Proceed Pro Se, identified as Exhibit 3 in the August 15th hearing he again revealed confidential proceedings before the Alaska Bar Association, and included a partial transcript of conversations he had had with his attorney that were secretly recorded. Moreover, he included threats, said he didn't care if the Court of Appeals threw his case out, used inappropriate, vulgar language, and believed doing so was appropriate and effective.

Appellant's emotional involvement in this case impairs his judgment. In a motion he filed in the Court of Appeals titled Motion for Stay of Forfeiture, Judgment of Restitution and Licenses Suspension Pending Appeal, he attached an appraisal of the airplane forfeited by the judgment of conviction. The appraisal indicates the forfeited airplane has a value of $11, 290. However, he testified at the August 15th hearing that the appraisal was "ridiculously low" and that he knew it was not the "true value." He testified that there was some missing documentation which caused the appraisal to be substantially distorted. Nonetheless, he filed the document with the Court of Appeals knowing it to be extremely inaccurate and misleading. While this may be one significant example, the length of the hearing was at least in part attributed to cross of examination of the defendant and attempts to get him to be forthcoming in his testimony. The court must be able to rely on veracity and trustworthiness of a litigant standing before it.

Throughout the appellant was unable to focus his arguments on the issues properly before the court. He was

unable to coherently present his case, he refused to follow the directions of the court, and he demonstrated his inability to understand the mechanics of the law necessary to coherently further his case.

IV. Conclusion

Based on the forgoing, it is respectfully submitted that the appellants should not be allowed to represent himself.

Dated September 18th, 2006 at Anchorage, Alaska.
DAVID W. MARQUEZ
ATTORNEY GENERAL

By: "s/"
Roger B. Rom
Assistant Attorney General
Alaska Bar No. 901 1128

APPENDIX II

July 25, 2008 - In the Court of Appeals of the State of Alaska, Haeg v. State, 7/25/08 Motion for Ruling, No. A-9455/ A-10015

7/25/08 MOTION FOR RULING

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case & respectfully asks this Court of Appeals for a ruling on return of property appeal #A-10015 prior to August 1, 2008.

Haeg first asked for the return of his property on July 25, 2006 – exactly 2 years ago. In the years since Haeg asked for and was granted 3 additional motions for expedited consideration & decision of this issue. [12/12/07, 2/6/08, & 5/21/08].

Every one of these motions made it clear that Haeg needed a decision made before summer – since the seized property, used in summer months, is the primary means by which Haeg puts food on the table for the entire year.

Haeg asked for permission to file an emergency motion for ruling and was told by Chief Deputy Clerk Lori Wade, "there was no emergency".

Attorney Andrew Peterson told Haeg that the State was in favor of a decision being made as soon as possible – as long as it was clear the State opposed a decision in Haeg's favor. Peterson stated he would file any response the State might have by the end of business on July 28, 2008 if Haeg would fax him a copy of the Motion for Ruling on July 25, 2008. Haeg will do so.

In the spring of 2004, using affidavits that falsified the location of the evidence (in order to justify guiding charges against Haeg) Alaska State Troopers applied to judicial officials for warrants, and, in a matter of minutes, received warrants to seize and deprive Haeg of his property, used as the primary means to provide a livelihood – all without notice to Haeg of an opportunity to contest either before or after the seizure.

Because Haeg was never told he had the opportunity to contest or bond, Haeg never contested the seizure based upon the Troopers false affidavits. If this would have been contested the property could not have been seized, deprived, and/or forfeited and there never would have been guide charges filed against Haeg.

It is 2 years since Haeg, after realizing the unlawful seizure and deprivation, first asked for his property back since the Troopers used false affidavits to take it and never informed Haeg of his right to contest – all which violated basic constitutional rights.

How can this be just, fair, or constitutional, especially when the Troopers took Haeg's property, that Haeg used to put food in his kids mouths, just hours after asking for authority to do this with false affidavits?

Does not fairness and constitutional due process require Haeg get a decision on getting his property back in an hour or 2 since he asked for authority for this with a truthful affidavit, which irrefutably justified the property's immediate return? How can Troopers obtain decisions and ex parte warrants to take the property in hours, and Haeg can't in over 2 years and counting – requests which the State was able to contest?

Because of this fundamental breakdown in justice Haeg respectfully asks this court for a decision deciding this matter by August 1, 2008.

This motion is supported by the accompanying affidavit.

RESPECTFULLY SUBMITTED this 25th day of July 2008.

"s/"
David S. Haeg, Pro Se Appellant

May 21, 2008 - In the Court of Appeals of the State of Alaska, Haeg v. State, 5/21/08 Motion for Ruling, No. A-9455/ A-10015

5/21/08 MOTION FOR RULING

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case & respectfully asks this Court of Appeals for a ruling on appeal #A-10015.

On January 29, 2008 this court granted a request for expedited consideration of this appeal. [*See* supporting copy]. On March 6, 2008 this Court of Appeals granted a request for expedited oral argument and decision of this appeal. [*See* supporting copy].

It is now 4 months after this Court of Appeals first agreed to expedite this appeal.

As the motions indicate Haeg needs his property during the summer to provide for his family.

Summer is again upon us.

It has been over 4 years since Haeg was deprived of his property in violation of the Due Process Clause of both the Alaska and U.S. constitutions.

Since September 7, 2007 this court has had the briefing necessary to decide this appeal. [*See* December 3, 2007 order].

It is now *9 months* later.

In light of the above startling facts Haeg respectfully requests a ruling on this appeal before June 1, 2008.

This motion is supported by the accompanying affidavit, motions, & orders granting them, and a Sunday, May 18, 2008 Anchorage Daily News article.

RESPECTFULLY SUBMITTED this 21st day of May 2008.

"s/"
David S. Haeg, Pro Se Appellant

December 28, 2007 - In the Court of Appeals of the State of Alaska, Haeg v. State, Order, No. A-9455.

12/28/07 OPPOSITION TO STATE'S 12/21/07 MOTION FOR NON-ROUTINE EXTENSION OF TIME

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case and hereby files an opposition to the State's motion for a 49 day non-routine extension of time in which to file appellee's brief.

FACTS

Appellate David Haeg was required to file his opening brief on or before January 22, 2007. David Haeg filed his brief on January 22, 2007 – utilizing the cassette recordings as required by *Appellate Rule 217(c)*. This rule further states that "written transcripts may not be prepared except by order of the court of appeals."

Appellate Rule 217(d) states the appellee's brief shall be served and filed within 20 days after service of the brief of the appellant.

On January 25, 2007 this Court of Appeals ordered the State to file it's brief of appellee by February 14, 2007 – or 23 days after David Haeg had filed his brief.

Instead the State asked that David Haeg's brief be rejected because it was over-length; because "Appellants brief does not comply with Ak Court Rules of Appellate Procedure 210(b)(1)(B)" (even though Appellate Rule 210 does not apply to appeals from district court – Rule 217 does) and because it did not contain victim's rights certificate (even though there was no victim).

On February 5, 2007 this Court of Appeals granted this motion and rejected David Haeg's brief – ordering a corrected brief on or before February 20, 2007.

David Haeg filed his corrected brief on February 20, 2007 and this Court of Appeals ordered the State file their appellees brief on or before April 3, 2007.

On March 30, 2007 the State requested a *non-routine* 45 day extension of time in which to file appellee's brief – a conclusory statement citing the press of business given as the reason the State needed this non-routine extension of time.

On April 14, 2007 this Court of Appeals granted the State's *non-routine* motion – ordering the State's brief on or before May 18, 2007.

The State filed its appellee's brief on May 18, 2007.

On May 24, 2007 this Court of Appeals ordered David Haeg's reply brief on or before May 31, 2007.

On May 30, 2007 David Haeg asked for a 30-day extension of time in which to file his reply brief.

On June 8, 2007 this Court of Appeals rejected the State's appellee brief because it failed to address any of David Haeg's claims of error. This Court of Appeals claimed this failure was a result of David Haeg's failure to properly cite to the record and to designate portions of the electronic record.

This Court of Appeals order also stayed the State's brief schedule and ordered David Haeg to designate the

portions of the electronic record which supported his claims of error.

On June 18, 2007 David Haeg filed his designation of the electronic record which supported his claims of error.

On June 27, 2007 the State moved to strike David Haeg's designation of the record that supported his case and to substitute their designation of the record.

On July 23, 2007 this Court of Appeals granted the State's motion to strike David Haeg's designation and to substitute it with their own designation. This Court of Appeals ordered Statewide Transcript Office to prepare and file transcripts on or before September 4, 2007.

On August 1, 2007 David Haeg asked for full-court reconsideration of this decision – resulting in a September 5, 2007 order allowing David Haeg to designate any additional portions of the electronic record he deemed necessary to make his case.

On September 10, 2007 David Haeg designated the additional portions of the record he deemed necessary to make his case.

On September 19, 2007 – the State moved to strike this designation of David Haeg's.

On October 1, 2007 David Haeg opposed this motion to strike.

On November 6, 2007 this Court of Appeals allowed David Haeg's designation to stand.

On December 3, 2007 this Court of Appeals ordered the State's appellee brief be filed on or before December 24, 2007.

On December 21, 2007 the State filed a *non-routine* motion for a 49-day extension of time in which to file their opening brief – giving a conclusory statement as to the press of business as justification.

In addition the motion did not indicate if David Haeg objected to the request or why the State was unable to determine David Haeg's position.

LAW

Appellate Rule 503.5(c) governs non-routine motions for extension of time for filing briefs. *Rule 503.5(c)(1)(F)* states that any such motion must include an affidavit stating,

> "A non-routine motion for an extension of time will be granted only upon a showing of diligence and substantial need. The motion must be filed before the expiration of the time prescribed for filing the brief, and must be accompanied by an affidavit stating: whether any other party separately represented objects to the request, or why the moving party has been unable to determine any such party's position. A conclusory statement as to the press of business does not constitute a showing of diligence and substantial need. (2) A non-routine motion that would extend the time for filing a brief more than 60 days beyond the original due date will be granted only

upon a showing of extraordinary and compelling circumstances and may be conditioned on the payment of sanctions in a sum of not more than $500."

ARGUMENT

The State failed to inquire whether David Haeg opposed this extension, as they were required to do by *Rule 503.5(c)(1)(F).*

The State's justification for a *second* non-routine addition of time was a conclusory statement as to the press of business – violating *Rule 503.5(c)(1)(F).*

In addition in the affidavit supporting the State's request they claim they have received one prior extension of time of 30 days. This would be a routine extension of time according to *Appellate Rule 503.5.* Yet the State specifically asked for and specifically received a 45-day non-routine extension of time. In other words this is not the first time the State has asked for a non-routine extension of time. It is their second request for a non-routine extension of time. It appears the State is trying to mislead the Court of Appeals into believing that they have not previously asked for and received a non-routine extension of time in which to file their brief.

The State is asking for another 49-day non-routine extension of time in addition to the 45-day non-routine extension of time they have already received.

This is a total of 94 days extension of time – all requested because of "the press of business."

These extensions of time are *in addition* to the months and months and months of time the State received because this Court of Appeals rejected their first brief because it failed to oppose David Haeg's brief.

Look at the startling facts: David Haeg filed his opening brief on January 22, 2007 and the corrected version on February 20, 2007. *Appellate Rule 217*, which governs David Haeg's case, required the appellee's brief to be filed *20 days* after the appellants. It is now 311 days *and counting* from when David Haeg filed his corrected brief.

This is a gross and fundamental breakdown in justice. David Haeg has a wife and two daughters that are in grades 1 and 4 – he cannot afford to fight the State, which has unlimited time and funds, forever.

Due process and justice requires his claims of error be dealt with in a timely manner. This has gone far beyond any concept of timely.

CONCLUSION

In the interest of justice David Haeg very respectfully asks this Court of Appeals to deny the State's defective, misleading, and non-routine request for an additional 49 days in which to file their brief.

In the interest of justice David Haeg very respectfully asks this Court of Appeals to utilize the appellee brief already filed by the State on May 18, 2007.

In the interest of justice David Haeg very respectfully asks this Court of Appeals to issue him a date by which he must submit his reply brief.

This opposition is supported by the accompanying affidavit. RESPECTFULLY SUBMITTED this 28th day of December 2007.

"s/"
David S. Haeg, Pro Se Appellant

October 29, 2007 - In the Court of Appeals of the State of Alaska, Haeg v. State, No. A-9455.

MOTION FOR RULING ON PETITION FOR REVIEW AND THE MOTION FOR ITS EXPEDITED REVIEW AND TO SUPPLEMENT THE RECORD OF DAVID'S CRIMINAL APPEAL WITH OFFICIAL PROCEEDINGS BEFORE THE ALASKA BAR ASSOCIATION & THE ALASKA COMMISSION OF JUDICIAL CONDUCT

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case and hereby files a motion for ruling and, in accordance with Criminal Rule 47, hereby files a motion to supplement the record with the official proceedings before the Alaska Bar Association and the Alaska Commission of Judicial Conduct.

MOTION FOR RULING

On 8/18/07 David filed a petition for review with this court of Magistrate Woodmancy's decision to not return all of David's property, used as the primary means to provide a livelihood, and to suppress it as evidence. David included a motion for expedited consideration of the petition for review – stating under oath that a delay would cause further expense, hardship, and deprivation of David's constitutional rights.

On 8/31/07 the State filed a motion for an extension of time in which to file the State's response to David's petition for review. This motion, although written in attorney of record Andrew Peterson's name, was signed by some unheard of attorney – directly violating Appellate Rule 514(e). This motion was supported by a two (2)-page affidavit in Andrew Peterson's name – yet signed by the

same unheard of attorney. Notary Sherry Gowan then certified this affidavit, with both her official seal and signature, that Andrew Peterson had been first duly sworn under oath before he stated and deposed the reasons David's motion should not be addressed in an expedited manner.

This is irrefutably the class B felony crime of perjury as defined by AS 11.56.200 and AS 11.56.240.

This fraudulent motion and fraudulent affidavit were then placed in the U.S. mail for delivery by same.

This is in violation of United States Code Title 18 Chapter 63 Section 1341, the federal felony of mail fraud, punishable by up to 20 years imprisonment. Since this fraud took both Gowan and the unheard of attorney to accomplish, it is also a conspiracy under United States Code Title 18 Chapter 18 Section 1341, also punishable by up to 20 years imprisonment. Since this fraud took both Gowan and the unheard of attorney to accomplish, it is also a conspiracy under United States Code Title 18 Chapter 18 Section 1341, also punishable by up to 20 years imprisonment.

On 9/7/07 David filed a motion to strike this motion and affidavit, citing perjury and conspiracy.

On 9/7/07, with no ruling from the Court of Appeals on the State's illegal motion for more time, the State filed an opposition to David's petition for review that was 10 days beyond the deadline in which to do so. This unauthorized opposition contained numerous intentional falsehoods and misrepresentations – including the following:

1. That David is asking for the very same relief already denied in his first petition for review by this Court of Appeals (when the Court of Appeals *never* even accepted that first petition for review, let alone ruled on David's requests in that petition for review – none of which included the return of his property and/or to suppress it as evidence.)

2. That Magistrate Woodmancy denied the forfeiture statutes were unconstitutional (when Magistrate Woodmancy had ruled he had no authority to determine whether or not they were unconstitutional.)

3. That David did not support his petition for review (when David supported it not only with facts, sworn to under penalty of perjury, but also with overwhelming and controlling caselaw and principles.)

4. That David failed to justify a petition for review under Appellate Rule 402(b)(1)-(4) (when David justified his petition with each and *every* one of the four (4) justifications, any one of which justifies review.)

5. That David failed to support his claim of enormous economic consequences, hardship, and injustice (when David supported this claim with a sworn affidavit that the property he is trying to recover with this petition for review, which includes his airplane, is the *primary* means with which *both* he and his wife Jackie provide a livelihood for their family of four (4) – and that this means has been kept from them for nearly four (4) years at present – all in violation of the constitutional and procedural due process that had to be provided "within days if not hours" of seizure).

6. That the District Court had no authority to find the statutes unconstitutional (when the very essence of a court's duty is to determine if laws and actions are in compliance with constitution).

7. That "This courts order (to the District Court) did not authorize Haeg to file a motion for the return of his property". This was the *exact* reason for this Court of Appeals remand. See Court of Appeals Order of 2/5/07:

> "Jurisdiction in this case is remanded to the District Court for the limited purpose of allowing Haeg *to file a motion for the return of his property* which the State seized in connection with this case. The District Court has the jurisdiction to conduct any proceedings necessary to decide this motion. We express no opinion on the merits of Haeg's motion. This limited remand does not alter the briefing deadline in this case."

8. That David cited no authority that would authorize Magistrate Woodmancy to find the forfeiture statutes unconstitutional or to suppress evidence (when David cited the constitutional rights of due process, equal protection under law, and against unreasonable searches and seizures, any one of which would authorize this – along with citing the specific U.S. and Alaska Supreme Court controlling caselaw and principles that also support Magistrate Woodmancy's authority to do this.)

9. That David had no right to the constitutional prompt notice of an opportunity to contest after the State seized and deprived him of his property that was his primary means to provide

a livelihood; that David had no right to the constitutional prompt notice of the intent to forfeit his property, used as his primary means to provide a livelihood; that David had no right to the constitutional prompt notice of the case for forfeiture of his property, used as his primary means to provide a livelihood, and that David had no right to the constitutional prompt notice of an opportunity to bond out his property, used as his primary means to provide a livelihood. (This is proven perjury by Peterson – proven by a literal mountain of U.S. and Alaska Supreme Court controlling caselaw and U.S. and Alaska Supreme Court controlling principles – all of which were presented to Magistrate Woodmancy in David's motion for the return of property and to suppress as evidence and to this Court of Appeals in David's petition for review.)

10. That Magistrate Woodmancy did not have to hold an evidentiary hearing because Criminal Rule 42(e)(3) provides "[i]f material issues of fact are *not* presented in the pleadings, the court need not hold an evidentiary hearing". Peterson fails to acknowledge *numerous* material issues of fact *were* presented in the pleadings: i.e. the affidavits used to obtain the property seizure warrants were based upon intentional perjury; the property taken was David's primary means to provide a livelihood; no notice of opportunity to contest was given "within days if not hours"; no notice of the case for forfeiture was given "within days if not hours"; no notice of the opportunity to bond was given "within days if not hours"; and that Fish and Game forfeiture statutes AS 16.05.190-195 provide no standards to comply with the preceding due process requirements – both as written and as applied to David – and are thus unconstitutional.

This fraudulent motion was then placed in the U.S. mail for delivery by same. Again this is in violation of United States Code Title 18 Chapter 63 Section 1341, the federal felony of mail fraud, punishable by up to 20 years imprisonment.

It is chilling the level of corruption and conspiracy that must exist in the Alaska Department of Law for them to be able to think they can lie like this in official documents, sent through the U.S. mail, with immunity. It really is not surprising at all they have never lifted a finger to prosecute the corruption in our State and Federal legislatures – the lawyers in the Department of Law are far more corrupt than the legislators.

On 9/17/07 David filed a motion to strike the State's opposition, citing all the above facts, citing the illegal motion and affidavit, citing the fact the State filed the opposition a week after the time to do so had expired, and that all this was done using the color of the law to continue illegally depriving David of the property he used as the primary means to provide a livelihood.

On or about 10/4/07, or 47 days after it was filed David called the Court of Appeals to express his concerns of having no ruling or acknowledgement whatsoever on his petition for review or on his motion for expedited consideration of his petition for review. Shannon Brown, the Court of Appeals clerk assigned to David's case, said they would have it out in 2 days.

On 10/11/07, or a week later, Brown called and informed David that the Court of Appeals would get a decision out the next day.

It is now 10/29/07, over two weeks after this last call, and *seventy two (72) days* since David filed his petition for review of his motion for return of his property and to suppress as evidence and his motion for expedited review – *still with no response whatsoever from this Court of Appeals.*

This is frightening when you carefully consider this with the *fact* that David filed *sixteen (16)* different motions *over nearly a year* in the *futile* attempt to have any court, including this Court of Appeals, decide this same motion – with this Court of Appeals only ordering the district court to decide it *after* David, having become so frustrated he was willing to die for this constitutionally guaranteed opportunity, told this Court of Appeals he would just go to the Trooper impound yard and physically take his property back that he used as the primary means to put food in his two (2) daughters mouths.

What an incredible saga to obtain the simple return of property taken in violation of constitutional rights that had to be provided "within days if not hours" – with Alaska's justice system *still* intentionally denying the return after almost four (4) years. *No one* would have come as far as David has – in other words this is now an intentional and provable conspiracy within Alaska's justice system to deprive citizens of their property by violating their constitutional rights – by forcing them to first have to bet their very life to just get the ball started and then by costing them so much money and time they must give up before ever getting to the end. It is a cruel, effective, deceptive, unjust, and unconstitutional conspiracy that uses concepts not understood by the great majority of the public – and is thus able to be kept hidden from them. The public may realize they are somehow being unfairly deprived of property by the justice system but would never

realize how or who is to blame or how to possibly begin to address it.

David files this motion with absolutely no expectation or hope of it ever being effectively addressed. Alaska's justice system has removed all hope of ever obtaining justice in this State. If it is address at all it will no doubt be remanded to some corrupt judge who, as Magistrate Woodmancy already has, will refuse to allow the constitutionally guaranteed cross examination of the adverse witnesses whom David could prove are committing perjury, refuse to allow the constitutionally guaranteed presentation of the overwhelming evidence in David's favor, refuse to allow the constitutionally guaranteed witness testimony that is also overwhelming in David's favor, and refuse to allow the constitutionally guaranteed oral argument so David could prove, point by point, the State has illegally taken and deprived him of his property he uses as the primary means of providing a livelihood for his family.

David will no longer wait patiently by as his life and the life of his family continues to be destroyed by this State's corrupt justice system. David is 41 years old, his wife Jackie is 42 years old, their daughter Kayla is 9 years old, and their daughter Cassie is 6 years old – *four (4) years* of their lives is too much to have allowed the State to have taken illegally and unchallenged. *Seventy two (72) days* is too long for a family to have to wait for a response to a motion for *expedited* consideration of a petition to get property back that is used as the *primary* means to put food in the families mouth – especially when this due process was first *required* to happen "within days if not hours" *four (4) years ago*. David's family is lucky they are not on death row with this Court of Appeals.

David will immediately file in federal court for relief from the never-ending injustice placed upon him and his family by this State – citing the massive and intentional deprivation of the equal protection of the laws in his entire criminal case. David demands this Court of Appeals continue to decide his motions, as is his constitutional right – no matter how untimely and unconstitutional these decisions are – until a federal court removes this responsibility from them.

MOTION TO SUPPLEMENT RECORD

While perfecting his federal civil rights complaint David has realized further plain error in his prosecution.

During the Fee Arbitration proceedings of 4/12 thru 4/13/06 and 7/11 thru 7/12/06 that David filed against attorney Brent Cole, both David's codefendant Tony Zellers and Zellers attorney Kevin Fitzgerald (Cole's one witness against David) testified under oath that the reason Zellers cooperated with the prosecution was because of David's cooperation in giving a plea negotiation interview implicating Zellers. In addition, at the Fee Arbitration proceeding both Cole and Fitzgerald testified under oath that both David and Zellers had immunity agreements for their cooperation. In other words, since Zellers cooperation was a direct result of David's cooperation, both David's immunity agreement and Evidence Rule 410 would keep Zellers from participating in any prosecution of David.

Yet Zellers was the prosecutions primary witness against David at David's trial and his testimony was the primary evidence against David.

This is a direct violation of David's constitutional rights against self-incrimination, equal protection of law, and due process; is a direct violation of Evidence Rule 410;

is incredibly prejudicial; and is thus *plain error*. As such it is David's constitutional right to have this issue included in his appeal.

Also uncovered during the perfection of David's federal civil rights complaint is that during the investigation by the Alaska Commission of Judicial Conduct into Judge Margaret Murphy's conduct, both Judge Murphy and Trooper Brett Gibbens perjured themselves. This perjury was in response to Executive Director Marla Greenstein's question of whether or not Judge Murphy had an unacceptable level of personal contact with Trooper Gibbens outside the courtroom – specifically whether Trooper Gibbens had given Judge Murphy rides to and from court during David's trial and sentencing. Both Judge Murphy and Trooper Gibbens testified that Trooper Gibbens had never given

Judge Murphy any rides until after David was sentenced. Trooper Gibbens had in fact given Judge Murphy every single ride to and from court during both David's 6-day trial and 2-day sentencing – every morning, noon, and night.

In *Napue v. Illinois*, 360 U.S. 264 (1959) the U.S. Supreme Court held that perjury that went only to a witness's credibility was cause for reversal of a conviction. In David's case both David's pretrial, trial, and sentencing judge (Murphy) and the main Trooper witness against David at trial (Gibbens, who was also the primary investigator in David's case) have now committed perjury in a conspiracy to cover up their prejudicial conduct in front of David's jury during David's trial and sentencing. This is thus *plain error* and as such it is David's constitutional right to have this issue included in his appeal.

David hereby formally requests effective evidentiary hearings, including cross-examination of adverse witnesses, evidence presentation, witness testimony, and oral argument, to fully expose the above *plain error* in his prosecution. After the evidentiary value of these issues are fully developed David formally requests they be added to the record of his appeal.

Further, because of the following, David formally requests this Court of Appeals conduct these evidentiary hearings themselves.

During the perfection of his federal civil lawsuit it has come to David's attention that his timely motion, supported by affidavit, to recuse Magistrate David Woodmancy (because of evident bias) was not honored in direct violation of *AS 22.20.022*. This remained unaddressed even after sitting judge Mark Wood (Woodmancy's superior) was apprised of this violation of the law and of David's constitutional rights.

Since he has remained assigned to David's case in violation of the law and David's rights Magistrate Woodmancy has made numerous decisions that are in direct conflict with all controlling law and principles so as to intentionally harm David – including his incomprehensible decisions refusing to allow David an effective hearing; refusing to return David's property, used as the primary means to provide his livelihood; refusing to suppress its use as evidence; and refusing to make decisions David must have for justice to prevail. Because of this *plain error* David requests this Court of Appeals conduct the evidentiary hearings necessary to develop the other plain error in his case.

In consideration of the ever-expanding plain error, constitutional violations, and fundamental breakdown in

justice above, David respectfully asks this Court of Appeals immediately grant all his motions.

This motion is supported by the accompanying affidavit. RESPECTFULLY SUBMITTED this 29th day of October 2007.

"s/"

David S. Haeg, Pro Se Appellant

August 1, 2007 - In the District Court for the State of Alaska Fourth Judicial District at Aniak, Haeg v. State, No. A-9455.

MOTION FOR RECONSIDERATION AND CLARIFICATION

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case, in accordance with *Alaska Rules of Criminal Procedure Rule No. 42(k)*, and hereby files this motion for reconsideration and clarification of this court's 7/23/07 ruling of David's motion for Return of Property and to Suppress as Evidence.

INTRODUCTION

This court has overlooked, misapplied or failed to consider the numerous decisions and principles directly controlling (cited in David's brief), which all hold that if an opportunity for a hearing to contest is not promptly given after seizure and deprivation of property, or if notice of the case for deprivation or intent to forfeit is not promptly given after seizure and deprivation, *all* property seized must be returned and suppressed as evidence. These decisions and principles directly controlling hold that if the statutes lack standards and allow the seizure, deprivation and/or forfeiture without requiring this procedural due process they are unconstitutional. These decisions and principles directly controlling hold that when evidence seized is also property, especially property used to provide a livelihood, it is subject to vastly different due process requirements than evidence alone. These decisions and principles directly controlling hold that the opportunity to contest property deprivations, to be effective, must include confrontation of adverse witnesses, presentation of evidence and witness testimony, and oral argument.

This court has overlooked or misconceived the material fact that no hearing was promptly given, no notice of the opportunity for a prompt hearing was given, and no notice of the case or intent to forfeit was promptly given. This court has overlooked the material fact that *AS 16.05.190* and *AS 16.05.195* allowed the seizure, deprivation, and forfeiture of property without the required procedural due process. This court has also overlooked or misconceived the material fact that the evidence seized was also property, which was the primary means to provide a livelihood. This court has also overlooked or misconceived the material fact that in deciding this motion, which is occurring over three years after the time of property deprivation, no confrontation of witnesses was allowed, no presentation of evidence or witness testimony was allowed, and no oral argument was allowed – even though all this was asked for numerous times.

In its decision this court has also failed to give any explanation or justification or to cite any decisions and/or principles directly controlling or even persuasive.

FACTS

During a criminal prosecution of David for misdemeanor Fish and Game crimes the State of Alaska, using warrants based upon perjury, seized and deprived David and Jackie Haeg of property used as the primary means to provide a livelihood. No hearing to protest was provided, no notice of a hearing or opportunity for a hearing to contest was provided, no notice of the case against their property was provided, no opportunity to bond the property out was provided, and no authority or intent to seek forfeiture of the property was ever provided in any warrant, charge or information filed. In addition, the statutes which authorized forfeitures in Fish and Game cases, *AS*

16.05.190 and *AS 16.05.195*, lack standards to require this constitutional due process during forfeiture actions.

Much of the property was forfeited after David's conviction.

David and Jackie, after they realized the State's violation of the procedural due process required by constitution, filed motions in both this district court and the Court of Appeals for the return of their property and to suppress it as evidence in accordance with Criminal Rule 37(c). After nearly a year of having both courts refusing to rule on 16 different motions, by saying the other court had jurisdiction, David finally stated he would physically go get he and Jackie's property from the Trooper impound yard. It was only after this that the Court of Appeals ordered the district court to conduct any proceedings necessary to determine the merits of David's motion.

This district court then denied David's multiple requests for the district court in which the property was seized to rule on the motion and for an evidentiary hearing so he could confront the witnesses against him, to present witness testimony and evidence, and to conduct oral argument – stating David could only provide a written request and that "this court can't turn back time to change what happened".

David filed his motion on 6/2/07 – supporting his arguments with numerous decisions and principles directly controlling. The State filed an opposition on 6/22/07 – without citing a single decision or principle directly controlling - and not contesting the fact they never gave David or Jackie notice of an opportunity to contest or of the case for forfeiture – and falsely claiming that David tried to "impermissibly shift the burden for seeking a post seizure

hearing from himself to the State." David filed a reply on 7/3/07. This district court's order failed to address almost every request David made in his motion – and failed to give authority, justification, explanation, or to place its essential findings on the record so if and/or when David appeals the decision the reviewing court would know this courts rational for its decision. David specifically asked the following from this court: (1) That the procedural due process violations by the State entitled David and Jackie to the return of *all* their property and to suppress it as evidence; (2) That *AS 16.05.190 and AS 16.05.195* are unconstitutional and that because of this the seizure, deprivation, and/or forfeiture of David and Jackie Haeg's property, without the constitutionally required notice and/or hearing, was and is void; (3) That because the seizure, deprivation, and/or forfeiture of David and Jackie Haeg's property was and is void everything seized, deprived, and/or forfeited must be immediately returned and suppressed as evidence; (4) That Trooper Gibbens search warrant affidavits, upon which all search warrants were authorized, contained intentional, misleading, and highly prejudicial perjury – and thus all evidence gathered as a result of these search warrants affidavits must be suppressed; (5) That because of the material issues of fact presented David and Jackie Haeg are allowed to testify, present evidence and oral argument, and subpoena witnesses so they may cross-examine them under oath. See *Criminal Rule 42(e)(3)*, "If material issues of fact are not presented in the pleadings, the court need not hold an evidentiary hearing." This means that if material issues of fact *are* presented, *as have been,* there must be an evidentiary hearing held; (6) That because of the obstructions and delays in getting this motion timely ruled on this court rule on *all* above requests – including the one declaring *AS 16.05.190 and AS 16.05.195* unconstitutional. (7) That this court to include its essential findings on the

record, including caselaw to support it, for the decision on each and every above request – especially the rational to differentiate between items that are returned and those not returned; (8) Also how the seizure, deprivation, and/or forfeiture of their property complied with U.S. and Alaska constitutional due process guarantees; (9) That this court place a very clear and detailed finding for dispensing with any and/or all evidentiary hearings in order to decide this motion which turns on issues of material fact - i.e. whether David and/or Jackie received a hearing or notice of their right to a hearing "within days if not hours" to contest the seizure of the property they used to provide a livelihood or even bond it out, notice of the case to forfeit before the hearing, notice of the statute authorizing this in the charging documents, whether the property was used to provide a livelihood, etc, etc, etc. (10) How not receiving an evidentiary hearing in which adverse witnesses could be cross examined, witness testimony and evidence be presented, and oral arguments does not deprive David and Jackie of their constitutional right to an *effective* opportunity to present their case; and (11) That the State affirmatively mislead the court in order to keep property they seized, deprived, and forfeited in violation of constitutional due process.

CONCLUSION

The decision and order from this court is defective in nearly every respect. It completely fails to address any of the concerns that David had to literally lay his life on the line to have addressed. It completely fails to apply law to the facts. It completely fails to cite any decisions or principles directly controlling to justify its decision to not return all the property or to suppress it as evidence – and completely fails to show how the numerous decisions and principles David cited, which entitle him to the return of *all*

property and to suppress it as evidence, did not control. It completely fails to consider or admit the fact that no post property seizure hearing or opportunity for a hearing was ever provided – and fails to consider or admit all law holds that if this is not done promptly *all* property seized must be returned and suppressed as evidence even if it has already been used as evidence or forfeited. It completely fails to consider the fact that no notice of the intent to forfeit, case for forfeiture, or statute authorizing forfeiture was ever given in any warrant, charge or information filed – and fails to consider or admit all law holds this deprives a defendant of a fair opportunity to prepare a defense, requiring *all* property forfeited to be returned. It completely fails to consider that property seizures are subject to vastly different rules than just evidence seizures. The decision fails to consider the fact all decisions and principles directly controlling hold forfeiture statutes are unconstitutional if they lack of standards and this results in a deprivation of due process. The decision fails to consider the fact the State affirmatively mislead the court to keep the property they seized, deprived, and forfeited in violation of constitutional due process – and claims that David involuntarily, unintelligently, and unknowingly "waived" his constitutional rights, which cannot be waived unless it is a voluntary, intelligent and knowing waiver. It completely fails to consider David's claim this is all "plain error" – requiring *all* property to be returned.

This court rubber-stamped, verbatim, without any explanation, authority cited, evidentiary hearing, or without any support or justification whatsoever, exactly what the State *wanted* - that David was entitled to only the property not forfeited or that could be returned to David without upsetting their conviction of David – when all the property was seized, deprived, and forfeited in violation of constitutional due process. It appears the court failed to

read David's brief proving the constitutional violations. It appears as if it is the policy of both the State and this court to ignore constitutional violations if they are detrimental to the State - and that this policy is somehow acceptable to the public who would bear the devastating price of this corruption. This is would be a gross violation of the publics trust. To ensure this is not policy this court needs to address the constitutional violations presented, render a decision that is in agreement with the numerous decisions and principles directly controlling, and then justify and explain the decision to show how it complies with both the U.S. and Alaska constitutions.

Because of the above defects, plain error, and fundamental breakdown in justice David respectfully asks this court to reconsider and clarify its decision of 7/23/07.

This motion is supported by the accompanying affidavit from David Haeg.

RESPECTFULLY SUBMITTED this 1ST day of August, 2007.

"s/"

David S. Haeg, Pro Se

November 27, 2006 - In the Court of Appeals of the State of Alaska, Haeg v. State, No. A-9455, Motion for Clarification.

MOTION FOR CLARIFICATION & RECONSIDERATION OF DENIAL OF ALL MOTIONS FILED ON NOVEMBER 6, 2006, INCLUDING ORAL ARGUMENTS, REQUEST TO KNOW HOW TO APPEAL DENIAL TO THE ALASKA SUPREME COURT, ORDER THAT DISTRICT COURT ACCEPT APPLICATION FOR POST-CONVICTION RELIEF AND CHANGE VENUE FOR THIS TO KENAI, ALASKA

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case, hereby moves this court, in accordance with *Appellate Rule 503(h),* for clarification & reconsideration of motions filed on November 6, 2006, by appellant. On November 16, 2006 this court issued an order denying all Haeg's motions. Motions denied included Emergency Motion for Return of Property and to Suppress Evidence, Motion to Correct and Stay Guide License Suspension, Motion for Summary Judgment Reversing Conviction with Prejudice, Motion to Supplement the Record, and Motion to Stay Appeal Pending Post-Conviction Relief Procedure. Current motion includes request for oral arguments and request on the proper procedure for Haeg to appeal these denials to the Alaska Supreme Court. See *Breck v. Ulmer,* 745 P.2d 66 (1987) "[a] judge should inform a pro se litigant of the proper procedure for the action he or she is obviously attempting to accomplish..." In addition Haeg asks this Court of Appeals for an order requiring the district court to accept a petition for postconviction relief – as they have ruled they will not do so. Haeg further asks this Court of Appeals to change the venue for this procedure to Kenai, Alaska

because of the immense bias in the trial court and the cost prejudice to Haeg and everyone else to conduct this in McGrath, Alaska.

I. Emergency Motion for Return of Property and to Suppress Evidence

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying his Emergency Motion for Return of Property and to Suppress Evidence. To deny ruling on Haeg's motion for return of property seized by the State the Court of Appeals states, "Apparently Haeg has not filed a motion under Criminal Rule 37(c)." The Court of Appeals is gravely mistaken in this. Haeg's motion of November 6, 2006 and supporting documents and the Court of Appeals own record in Haeg's case in no uncertain terms establishes that Haeg has made numerous and repeated attempts in both the district courts in which his property was seized for the return of his property, citing both Criminal Rule 37 (c) and Return of Property and Suppress Evidence - with the first of *fifteen (15)* separate motions being filed on 7/18/06.[1] Approximately every two (2) weeks Haeg and/or his wife filed new, amended, and/or expedited Criminal Rule 37(c) motions firmly telling the district courts that this motion was to be ruled on by them because it had to do with urgent and established constitutional due process concerns in protecting the livelihood of a family – and the jurisdiction to rule on these motions was clearly with the district courts. In addition Haeg pointed out he was in exact compliance with the specific rule that said these motions were to be filed in the court in the district in which the property was seized or in which the property may be used. At all times the district courts remained unpersuaded and in fact on 9/26/06 Judge David Landry issued a widely distributed memorandum, including to this

[1] See enclosed motions included in attached appendix.

court, explaining the situation, asking for advice, and trying to sidestep the issue by again claiming the case had gone to judgment and is currently on appeal. Judge Landry further tried to sidestep and confuse the issue by claiming that Haeg was apparently only concerned with a search warrant issued by him when in fact almost all of the property seized and illegally held in his district was though perjured search warrants issued in McGrath[2]. Both district courts (Aniak and Kenai) have refused to rule on Haeg's motions – telling Haeg that they had no jurisdiction to do so as Haeg's appeal of his criminal conviction was the jurisdiction of the Court of Appeals. Haeg went so far as to several times inform both Morgan Christen and Mark Wood, the sitting judges for the third and forth districts, of the absolute refusal for anyone to rule on Haeg's motion, still all to no avail and with no response from any judge – even judges Christen and Wood.

More recently Judge Landry issued the only order in response to these numerous motions – denying Haeg's motion because "Subject matter and issues raised are the jurisdiction of the Court of Appeals" and "Believe this matter remains under the jurisdiction of the Court of Appeals".

Haeg and his wife have been illegally deprived of their property, used to provide the primary livelihood for their family, for nearly *three (3) years* at present. After Haeg and his wife realized this and said something they have been denied their property for an additional five (5) months after repeatedly telling the court of this injustice and asking, in exact accordance with rule and established case law, that something be done.

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[2] See enclosed memorandum by Judge Landry dated 9/26/06.

The limited response so far to Haeg's motions only arrived after Haeg and his wife told numerous judges, including all those in the Court of Appeals and Supreme Court, they were traveling to the Alaska State Troopers in Anchorage to recover their property – citing all they had done in the courts according to the Rule of Law – all with absolutely no response. The forced responses finally received were absurd and complete nonsense. This Court of Appeals, in refusing to rule, claims Haeg "hasn't filed anything with the district court" and the district courts, in refusing to rule, claim, "We don't have any jurisdiction because jurisdiction is held by the Court of Appeals." Because Haeg and his wife are absolutely and irrefutably entitled to the return of their property, each court can only deny them this through the childish and corrupt ploy of saying "we can't rule because it's not our jurisdiction – it's the other courts jurisdiction". Yet in *five (5) months,* even *after* communicating about the issue with each other, they refuse to do anything. It should be clear that the courts are actively, intentionally, maliciously and corruptly denying Haeg and his wife their clear rights according to Rule, Law, and constitution. The courts know if they continue this long enough a pro se defendant will eventually have to give up fighting for his constitutional rights to his property, used to provide a livelihood, and have to find another way to make a living for his family. It is an unbelievably effective, ruthless, and chilling way to deny someone their constitutional rights – even more so when it is proven that it is being actively and aggressively utilized by multiple levels of courts.

In addition if Haeg had been afforded firmly established due process in the first place it would have been proven that all the search warrants used to seize the property were based on unbelievably intentional, knowing, and prejudicial perjury – again ending, before it ever

started, the prosecution that has devastated and continues, unabated, to devastate Haeg and his family.

When Haeg, his wife and approximately twenty (20) other concerned people drove up from Soldotna to ask the troopers for the return of their property and, after they were again denied, continued onto the Court of Appeals to express their disbelief with the Court of Appeals ruling, the clerks of the Court of Appeals advised Haeg, his wife, and the assembled citizens that the Court of Appeals record contained the numerous motions Haeg filed in the district courts for return of property and to suppress evidence in accordance with *Criminal Rule 37(c).* The record of these motions was in addition to the multiple times Haeg clearly stated this fact in the very motion the Court of Appeals denied by claiming he had not filed these motions. How is it possible then for the Court of Appeals to deny ruling on Haeg's motion by claiming he has never filed a Criminal Rule 37 (c) motion requesting return of property and suppress as evidence? Did the Court of Appeals read Haeg's motion? If not why not? Did the Court of Appeals read the record in Haeg's case? If not why not? If they did read either of these how and why did they claim Haeg had "Apparently not filed a motion under Criminal Rule 37(c)"?

Haeg is confused that the Court of Appeals claims he "**still** has the opportunity to ask the trial court for the return of the property." How many times must someone ask for return of his or her property - more than the *fifteen (15)* times he has already asked over the last *five (5) months?* What is the magic number? Does the Court of Appeals mean David and Jackie Haeg have the right to ask the court for the return of their property but the court has no obligation to answer? Exactly what is the job of the court? What good is the to right to ask if the courts have no obligation to respond?

Next the Court of Appeals states that the trial court must decide these issues before Haeg can ask for appellate review. If the district courts refuse to decide on these motions as they have done now for *five (5) months* after receiving *fifteen (15)* separate motions what is Haeg supposed to do – give up? Haeg will never do so and in fact cannot wait until he gets to explain this blatant corruption to the U.S. Supreme Court. It is obvious both the Court of Appeals and the district courts realize Haeg and his wife are entitled, by irrefutable and established constitutional due process, to their property back and are illegally refusing Haeg this in order to bankrupt Haeg and keep the corruption of the lawyers, Troopers, and judges in Haeg's case covered up.

Of special interest to Haeg is where this Court of Appeals states, "alternatively the State may seek to forfeit the property." Exactly how and why are they allowed to do this? The prosecution has illegally seized and illegally held Haeg's property, used to provide a livelihood, for nearly three years, and, even though they never gave Haeg or his wife the required notice they would seek to forfeit it, convinced the court to forfeit most of it after this. The State never obeyed *any* of the "ensemble of procedural rules that bounds the states discretion Motion for Reconsideration Page 8 of 47 to seize [property] and limits the risk and duration of harmful errors" that the Alaska Supreme Court requires the prosecution *must* follow. What happens to the State when they blatantly break this "ensemble" of constitutional protections to illegally and irreparably harm someone and put the resulting money in their pocket? Absolutely nothing as this Court of Appeals has ruled? Why would they *ever* obey this "ensemble" when it is so lucrative and there is no punishment?

Did this court read Haeg's motions, memorandum, affidavits and supporting documents? If they did they should know that the Alaska Supreme Court has ruled, "as a general rule, forfeitures are disfavored by the law, and thus forfeiture statutes should be strictly construed against the government." To Haeg this means if the State breaks this "ensemble" of protections they have to return the property and cannot use it as evidence – exactly as Criminal Rule 37(c) reads and the Supreme Court ruled. How then can the Court of Appeals, unless they are corrupt, rule that the State may *still* seek to forfeit David and Jackie Haeg's property that was seized, held, and forfeited in clear violation of this "ensemble" of established constitutional due process?

The State never provided Haeg or his wife anything in writing whatsoever to inform him they were going to seek forfeiture of their property. In none of the search warrants or three informations charging Haeg is there a single reference to the State's desire or intention to forfeit Haeg's property – or even a reference to the rule allowing this. Rom even admits this, Motion for Reconsideration Page 9 of 47 stating, "Although the judgments do not reflect the statutory authorization for forfeiture of the aircraft, and appellant does not directly raise this in his brief, AS 16.05.190-.195 and AS 08.54.720(f)(4) authorize forfeiture upon conviction. See Waiste, 10 P.3d at 1152-53." In other words the court forfeited Haeg's property without giving Haeg or his wife any chance whatsoever to prepare a defense against this. This is against the law. In fact Federal Rule of Criminal Procedures 7 and 32.2 prohibit anything being forfeited if the intent to forfeit property is not specifically articulated in the charging documents. This is to ensure that the person to be deprived has the constitutionally guaranteed "notice" of the case against his property and an opportunity to prepare to meet it. Neither

Haeg nor his wife ever received this guaranteed "notice" of a case against their property.

Is the Court of Appeals trying to convince Haeg that it doesn't matter the State has illegally deprived him and his wife of their livelihood since the very beginning, effectively bankrupting him and his wife, and now the State gets to start over with a clean slate and seek forfeiture once again? So the State gets a clean slate but Haeg is required to keep his dirty, shattered, and bankrupt one? What, exactly, is the reasoning for this ruling? Would not constitutionally guaranteed fundamental fairness, clearly expressed in the due process clause, require a ruling exactly opposite? That Haeg gets a new, clean, and unbankrupt slate and the State gets the dirty, broken, and bankrupt one? Haeg thinks the following courts have already ruled this upon this grave issue:

> U.S. Supreme Court in *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). "Only 'wip[ing] the slate clean ... would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place.' The Due Process Clause demands no less in this case."
>
> U.S. Supreme Court in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969). "[D]ue process is afforded only by the kinds of 'notice' and 'hearing' which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged [defendant] before he can be deprived of his property or its unrestricted use. I think this is the thrust of

> the past cases in this Court [U.S. Supreme Court]."
>
> U.S. Supreme Court in *Wiren v Eide*, 542 F2d 757 (9th Cir. 1976)."Where the property was forfeited without constitutionally adequate notice to the claimant, the courts must provide relief, either by vacating the default judgment, or by allowing a collateral suit."
>
> Alaska Supreme Court in *Etheredge v. Bradley,* 502 P.2d 146 Alaska 1972. "Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing ... this procedure violates the fundamental principles of due process."

Neither Haeg nor his wife ever received any of these constitutional guarantees - above-required notice, hearings, or opportunity to bond (part of the "ensemble"). The prosecution came, seized most of the property Haeg and his wife used to provide the entire livelihood for their two daughters, used perjured search warrant affidavits from a single Trooper to do so, and, when Haeg asked when he could get his property back because he had clients coming in the next day, answered "never". When, after being illegally deprived for over a year Haeg asked if at least he could bond his property out the judge refused to make a ruling – and refused to rule even after Haeg filed second motion asking her to rule on the first motion. The State's argument, used to blackmail Judge Murphy not to rule, is very enlightening; "The court will be *usurping executive authority* if it allows Haeg to bond his [property]". This democracy called the United States is dependent upon the

checks and balances between the executive, judicial and legislative. It is very chilling indeed when it is so corrupt the executive is using the judiciary's checks **against** the judiciary to deny someone constitutionally guaranteed rights.

If the State is now allowed to re-forfeit Haeg's property or forfeit the property they still possess after they were denied forfeiture by the court because it was never even used as "evidence", they will have no reason to ever follow the "ensemble of procedural rules that bounds the states discretion to seize [property] and limits the risk and duration of harmful errors" because it will be proven there is no punishment if the State doesn't obey these constitutional protections.

II. Motion to Stay Appeal Pending Post-Conviction Relief Procedure

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying stay of his appeal until after his post-conviction relief procedure claiming ineffective assistance and corruption of counsel, prosecutorial misconduct/corruption, and judicial misconduct/corruption is finished. The court has somehow justified their action by merely stating: "the law allows Haeg to pursue an appeal and a petition for post-conviction relief at the same time". This court never addressed the undeniable, immense, and fatal prejudice to Haeg that doing this would cause him – all documented for them to consider in the very motion this court denied. Also, the court did not claim the State would be in anyway prejudiced if Haeg' appeal was stayed.

All seminal Alaskan cases, including those by this Court of Appeals involving this exact situation, have held a

defendant *must* first move for a new trial or sought post-conviction relief before moving forward with an appeal claiming ineffective assistance of counsel. This Court of Appeals in State v. Jones 759 P.2d 558 made it extremely clear: "Jones also filed a direct appeal challenging his conviction & sentence on unrelated grounds. *The appeal was stayed pending resolution of the postconviction procedure".*

> See also: *Barry v. State,* 675 P.2d 1292: "we observed that in appeals raising the issue of ineffective assistance of counsel, the trial record will seldom conclusively establish incompetent representation, because it will rarely provide an explanation for the course of conduct that is challenged as deficient. We concluded that, *'henceforth we will not entertain claims of ineffective assistance of counsel on appeal unless the defendant has first moved for a new trial or sought post-conviction relief'"*
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> *Grinols v. State No. A-7349: "But many states – including Alaska – generally forbid a defendant from raising ineffective assistance of counsel claims on direct appeal. Instead, Alaska & these other states require a defendant to pursue post-conviction relief Motion for Reconsideration Page 13 of 47 litigation if they want to attack the competence of their trial attorney".*
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> Alaska Supreme Court in *Risher v. State* 523 P.2d 421: "Whether counsel is incompetent usually can be ascertained only after trial ... it may be necessary to remand

for an evidentiary hearing on this issue. For example, if on appeal it is contended that trial counsel could have discovered helpful evidence, we might remand for a hearing on that issue. In most such cases, however, the necessity of an appeal & remanded may be avoided by first applying at the trial court level for a new trial or moving for post-conviction relief."

United States Court of Appeals for the Seventh Circuit *US v. Fuller No. 00-2023*: "We generally discourage appellants from bringing ineffective assistance of counsel claims for the first time on direct appeal because only rarely is the trial record sufficiently developed for meaningful review. *See United States v. Pergler,* 233 F.3d 1005, 1009 (7th Cir. 2000); *United States v. Martinez,* 169 F.3d 1049, 1052 (7th Cir. 1999)."

Why does this same Court of Appeals refuse him this when they *require* it of everyone else? Haeg wonders if this is equal protection under law – when it is so extremely prejudicial to force him to proceed with an appeal based upon a nearly worthless record and at the same time telling him if he wants to conduct a post-conviction relief procedure to supplement the record he must do it at the same time. Yet, because his brief must be filed before this is done, this new evidence will never be considered in deciding his appeal. Also, because he will be trying to conduct both at the same time, along with still providing for his family, neither the appeal nor the postconviction relief procedure will receive the attention each needs to succeed. Is this the reason for this decision from the Court of Appeals? That

they do not want Haeg to be able to conduct an effective appeal or post-conviction relief and/or they do not want to have on record the full truth of what happened to Haeg before deciding Haeg's appeal? Haeg would like to point out it was his counsel, who was actively representing interests in direct conflict with Haeg's, who filed Haeg's appeal. Haeg does not want to dismiss this appeal; he just wants a fundamentally fair opportunity to present it.

Of interest also is that nearly every court case Haeg has found has allowed and/or required a post-conviction relief procedure to finish before allowing an appeal claiming ineffective assistance of counsel to move forward. The overwhelming rational is that it is a waste of everyone's resources – judicial, defendant, and prosecution – to conduct an appeal which cannot get to the heart of the matter because the record is inadequate; and will have to be duplicated after the record is supplemented. Haeg has precious few resources left – the judicial and State prosecution have unlimited resources - as they get theirs from Haeg and every other taxpayer. The only possible reason that Haeg can imagine for the Court of Appeals singular treatment of him is that they are actively trying to bankrupt him and sabotage his appeal and post-conviction relief procedure. The only reason he could imagine for this is that they are actively trying to protect the State, Haeg's former attorneys, and/or Judge Murphy from the consequences of their unbelievable actions in Haeg's case.

Haeg is also very curious if the courts will now rule that he cannot bring a post-conviction relief procedure claiming ineffective assistance of counsel, prosecutorial misconduct, and judicial misconduct because they "*could have been but were not* raised in a direct appeal from the proceeding that resulted in the conviction". Haeg thinks this would be a very effective way for this or any other

court to further sabotage his appeal and/or post-conviction relief procedure and keep everything under wraps.

Haeg would also like this court to address, since it failed to do so earlier, his request, made in the motion of November 6, 2006 to stay appeal, to order the district court to accept an application for post-conviction relief and to change the venue for this process to Kenai, Alaska. The reasons for this are already outlined in the original motion. The trial court has ruled that it would not accept an application for post-conviction relief from Haeg and that he would have to file such an application with the Court of Appeals – remaining unpersuaded even after Haeg pointed out the rules did not allow him to file such an application with the Court of Appeals. This again directly shows the bias of the trial court against Haeg, and, along with the huge cost prejudice in conducting this procedure in McGrath, provides a sound basis for the change of venue.

III. *Motion to Supplement the Record*

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying his Motion to Supplement the Record. Haeg has found that the court record can be supplemented with attorney disciplinary proceedings and judicial disciplinary proceedings but the trial court has refused to grant or even rule on this. This Court of Appeals has also now denied his request, stating "the record on appeal is to consist solely of evidence and documents presented to the trial court during the proceedings that we are being asked to review. See Appellate Rule 210(a)." Yet the Court of Appeals is mistaken in this – as Appellate Rule 217, which governs appeals from district court, clearly applies. Rule 217(c) states: "Unless otherwise ordered by the court of appeals, the record on appeal shall consist of the *entire* district court

file, together with recordings of the electronic record designated by the parties." Haeg asks this court if this means anything he filed with the district court then is part of the record in his case – and if not why not. Haeg also asks this court exactly how and why it is that everything, including the electronic record and motions filed, made during Haeg's representation hearing before the trial court concerning the corruption by the State and attorney's in Haeg's case, have been carefully and completely wiped from the official case record. Haeg points out that the trial court has refused to respond to three different and direct inquiries of this exact issue. Haeg respectfully asks how to proceed - again citing Motion for Reconsideration Page 17 of 47 Alaska Supreme Court case law established in *Collins v. Artic Builders*, 957 P.2d 980 (1998), *Breck v. Ulmer*, 745 P.2d 66 (1987), *Keating v. Traynor*, 833 P.2d 695 (1992), & *Sopko v. Dowell Schlumberger, Inc.*, 21 P.3d 1265 (2001) – all of which indicate a court should point out the proper procedure for a pro se defendant to accomplish what it is he is obviously attempting to accomplish. As indicated in his original motion, Haeg must have all official proceedings, including those before the Alaska Bar Association and the Alaska Commission on Judicial Conduct, made part of the record for him to obtain justice.

> *US v. Fuller,* No. 00-2023 (7th Cir. Dec. 20, 2001). "Mr. Fuller also submitted documentation of a grievance he had filed against his defense counsel with the Wisconsin state bar. We granted Mr. Fuller's motion, holding that for purposes of appeal defense counsel had an actual conflict of interest in view of allegations made by Mr. Fuller in various *pro se* submissions to this court. Although our order specified that defense counsel had a conflict of interest for

> the purposes of Mr. Fuller's appeal, we expressly reserved comment on whether defense counsel had a conflict of interest at the time he argued Mr. Fuller's motion to withdraw his plea. The Government has filed a motion to strike from appellant's opening brief the letter discussing the grievance that Mr. Fuller filed against his defense counsel with the Wisconsin state bar. This letter has already been discussed in our order granting Mr. Fuller's motion for appointment of new counsel. Accordingly, we deny the Government's motion and *sua sponte* supplement the record with the letter."

IV. *Motion for Summary Judgment Reversing Conviction with Prejudice*

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying his Motion for Summary Judgment Reversing Conviction with Prejudice. If the Court of Motion for Reconsideration Page 18 of 47 Appeals cannot do this Haeg, as a pro se defendant, respectfully asks to know the proper procedure for accomplishing this – as the State has not contested, nor can it contest, the merits of such a motion. This motion would end the gross and ongoing fundamental breakdown in justice and the adversarial system in Haeg's case – sparing he and his family from further harm.

V. *Motion to Correct and Stay Guide License Suspension*

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying his Motion to Correct and Stay Guide License Suspension. This court has ruled

on the motion to correct that it has "the power to grant this kind of relief only if the trial court had no legal authority to revoke Haeg's license, or if the trial court was clearly mistaken in deciding to impose a license revocation as opposed to a suspension. In either event, we would not grant such relief until we decided Haeg's appeal". If this court refuses to correct Haeg's sentence until after his appeal, which, at the rate it is going, may be years away, he will already have been forced to destroy the exceedingly expensive camps - which will include burning them down and flying out the heaters, stoves, lights, bunks, tables, etc. etc. - as required by the Bureau of Land Management because of the current license revocation. How can this court possibly choose to ignore this obvious and immense prejudice to Haeg until *after* it happens to him – especially when the error, both legal and clearly a mistake, by the sentencing court is so clear? The State even admits this plain error is because the judgment *form* states "revocation" while the *law* states "requires the court to ... *suspend* the guide license ... for a specified period of not less than three years, or to *permanently revoke* the guide license". How can the trial court order a five year revocation when the law does not allow this – with a *permanent* revocation the only revocation allowed? Again Haeg asks the reason why the Court of Appeals refuses to promptly rule so Haeg is again undeniably prejudiced so severely simply because a *form* fails to follow the *law*. Haeg points to Appellate Rule 503(d) "As *soon as practical* after the seven-day period [so adverse parties have time to respond], the motion will be considered." Exactly why does this Court of Appeals disregard this rule in Haeg's case? To Haeg it is clear this court and its judges are abdicating one of their most basic mandates – to keep the parties from being unjustly prejudiced (for those non-attorneys reading this prejudiced means harmed). Haeg can see no reason for this other than he must be prejudiced to the extent he can

no longer expose the conduct of his defense attorney's, the prosecution, and the judges in his case. Again Haeg points to the sworn testimony by attorneys before the Alaska Bar Association concerning his representation: "there would be immense [political] pressure brought to bear on the prosecution and *judge* [to make an example of Haeg]". Haeg wonders if in the next round of sworn testimony "judge" will change to "judges". Haeg also respectfully asks this court if he is allowed to sue them for the damages their refusal to rule "as soon as practical" will cause him. It should be in the neighborhood of $100,000.00 in actual damages, although Haeg will of course seek additional punitive damages.

Haeg has asked the trial court (Judge Murphy) to stay suspension/revocation of his guide license and this was denied at sentencing – as was already made clear to this Court of Appeals. This Court of Appeals stated it needed to know the reason for this refusal before it could consider ruling on Haeg's request to stay license suspension/revocation. The reason for denial was, as Haeg already made clear in his motion and is recorded on the sentencing record, that "most, if not all, the wolves were taken where Haeg [guides]". As Haeg has made exceedingly clear in multiple affidavits from both himself and his wife Jackie and wisely unchallenged by prosecutor Rom, this is patently false. This premeditated deception started with the intentional perjury by Trooper Brett Gibbens on all his search warrant affidavits (with Haeg's attorneys telling Haeg "it doesn't matter" when he asked what to do about it), and continued before Haeg's jury and Judge Murphy through the perjury of Gibbens that was suborned by prosecutor Scot Leaders (*after* they had both taped themselves being told it was perjury). After Haeg was sentenced Trooper Gibbens wrote a memorandum to Trooper Lieutenant Steve Bear (at Haeg's request) stating

that *none* of the sites he investigated were in the Game Management Unit in which Haeg guides or has ever been allowed to guide and that the sites were *all* in the Game Management Unit in which the Wolf Control Program was being conducted. This is in direct contradiction to Trooper Gibbens Motion for Reconsideration Page 21 of 47 sworn statements on both his search warrant affidavits and during his testimony (after he and Leaders taped themselves being told it would be perjury) before Haeg's judge and jury. The prejudice of this intentional, continued, knowing, and malicious perjury had an almost incomprehensible effect on Haeg's case. It allowed the prosecution to charge and convict Haeg of big game guiding violations and end his and his wife's livelihood and life investment forever. It speaks volumes that the States opposition to Haeg's motion is silent on this point and many others, including the fact that **after** they induced Haeg (via a Rule 11 Plea Agreement that would have resulted in an active **6 month suspension** instead of the **6 year revocation** Haeg received) to give them a five-hour statement, have him and his wife give up an entire combined years income and the season was past, and had him fly in multiple witnesses from around the U.S. they broke their promises to Haeg yet still used his statements, corrupted by the included, known, and pointed out perjury, to file all charges that were in direct violation of the Rule 11 Plea Agreement (and necessarily Evidence Rule 410 and the constitutional right against self-incrimination), and then take Haeg to trial on these charges because he was now bankrupt and they had his attorney in their pocket. For these many, irrefutable, and compelling reasons, including fraud upon the court, Haeg again asks that his guide license suspension/revocation be stayed pending outcome of his appeal.

Haeg is in such shock that absolutely no relief was given to him from this Court of Appeals, asked for in the motions hand delivered to this court on November 6, 2006, that he wishes to know the proper procedure[3] to appeal the denials of these motions to the Alaska Supreme Court. It is incomprehensible to Haeg that he was denied relief after explaining, in exact detail, supplemented by numerous affidavits, the fraud and abuses that have happened during his prosecution.

Opposition from State

Haeg, to show the depth and breadth of the corruption, will dissect just the recent State's opposition (included) and actions in Haeg's case. Special Prosecutor Roger Rom, the professional attorney who is representing the State against Haeg (not an attorney) in these matters, swore, under penalty of perjury, that all factual claims made by him in his oppositions are true and accurate to the best of his knowledge.

I

Prosecutor Rom correctly states this court *stayed* imposition of restitution yet the prosecution then garnished Haeg's permanent fund dividend, without providing any of the constitutional guarantees guarding against errors, to pay for this same restitution, even *after* it had been already been paid in full. In other words Rom and the prosecution not only took Haeg's money *after* the restitution had *already* been paid in full but even *after* Haeg was granted, according to this courts ruling, the right to *not* pay it. And, to do so, they ignored the constitutional guarantees that

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[3] *Breck v. Ulmer*, 745 P.2d 66 (1987) "[a] judge should inform a pro se litigant of the proper procedure for the action he or she is obviously attempting to accomplish..."

had to be given *before* doing so (because this had nothing to do with a criminal investigation the hearing to contest the deprivation had to be given in advance of seizure). Haeg wonders just how many others are presently being deprived of their dividends, or other property, in direct violation of constitutional due process in Alaska. Haeg wonders how many will be deprived illegally in the future. The prosecution said they are so far behind that it will be many months before they can look into the problem. This should illustrate the kind of mistakes that the "ensemble" of constitutional guarantees guard against. Just think of the consequences if it was Haeg's property at stake, used to put food in his kids mouths and heat in their bedroom, instead of just his dividend when this "mistake" took place. Oh! Haeg forgot. The "mistake" that did that happened almost three years ago.

II

Rom states Haeg "seeks an order of this court directing the State to return *evidence* lawfully seized and forfeited in this case" and "he needs a court order because he intends to confront the troopers on November 16, 2006, demanding return of the *evidence*." Yet in every one of Haeg's 16 motions it is painfully clear Haeg seeks return of his *property*, used as the primary means to provide a livelihood for his family, and never once asks for return of *evidence*. Once again the difference to Haeg and prosecutor Rom could not be greater. There is no rule to return *evidence* yet there is a clear rule, backed up by the mightiest of constitutional guarantees, to return *property*, even if called "*evidence*" by the prosecution, if seized, held, and/or forfeited in violation of due process. Thus, because of the blatant violations of these guarantees, Haeg's property was illegally seized, held, and forfeited because it was treated *only* as "evidence". The rational is plain common

sense – before you can put someone out of business for god only knows how long by seizing their business property (in Haeg's case almost three years), because you *might* use their property as "evidence" (it is interesting that most of Haeg's property that was seized, held, and/or forfeited was never used as "evidence" and that all of it that the court refused to forfeit is *still* being held by the State), you must comply with different guarantees than if the "evidence" taken and held was someone's fingerprints, statements or wiretap recordings – the deprivation of which would not affect their ability to put food in their families mouth. Apparently Rom thinks it proper for the State to be able to bankrupt a defendant on little more than a whim (its just "evidence"), without making sure there was no error (remember Haeg's dividend), and far before ever having to decide whether or not to even file charges. Before our revered "adversarial system" gets started the prosecution has already won through subterfuge.

III

Rom states Haeg "claims that the State was required to provide him with a hearing so he could challenge the search warrant which led to the collection of the evidence and eventual forfeiture in the judgment of conviction. Because he is both legally and factually mistaken, his motion must be denied." This is blatant, intentional, and knowing perjury (class B felony) by Rom. These Alaska Supreme Court decisions, which Haeg has pointed out over and over to Rom, prove this perjury:

> "The standards of due process under the Alaska and federal constitutions require that a deprivation of property be *accompanied by notice and opportunity for hearing* at a meaningful time to minimize

possible injury. When the seized property is used by its owner in earning a livelihood, *notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees* even where the government interest in the seizure is urgent." *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980).

"Waiste and the State agree that the Due Process Clause of the Alaska Constitution *requires a prompt postseizure hearing* upon seizure of a fishing boat potentially subject to forfeiture." "The State argues that a *prompt postseizure hearing is the only process due*, both under general constitutional principles and under this court's precedents on fishing-boat seizures". "This courts dicta, and the persuasive weight of federal law, both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing." "*Given the conceded requirement of a prompt postseizure hearing* on the same issues, in the same forum, "within days, if not hours," the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for seizure a few days or hours earlier. The interest in avoiding that slight burden is not significant." "The State does not discuss the private interest at stake, and Waiste is plainly right that it is significant: even a few days' lost fishing during a three-week salmon run is serious, and due process

> mandates heightened solicitude when someone is deprived of her or his primary source of income." "An ensemble of procedural rules bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors. The rules include the need to show probable cause to think a vessel forfeitable in an ex parte hearing before a neutral magistrate, to allow release of the vessel on bond, *and to afford a prompt postseizure hearing*." Waiste v. State, 10 P.3d 1141 (Alaska 2000)."

Neither Haeg nor his wife Jackie were ever given a single one of this "ensemble" of constitutional guarantees before being deprived for *years* of their primary means of providing a livelihood for their two daughters, ages 5 and 8.

IV

Rom states, "The Aniak District Court authorized two search warrants which appear to apply to appellants arguments." Rom is again incorrect. Haeg's arguments apply to all five search warrants issued in his case because all five seized property that Haeg and his wife used to provide a livelihood.

V

Rom states, "Since appellant was served with the search warrant he had notice that the State had seized his property pursuant to a warrant. Criminal Rule 37(c) provided a mechanism for him to challenge the lawfulness of the seizure. Whether he exercised his right or not is irrelevant. The law provided due process for him to do so if he made that choice."

This is more smoke and mirrors by Rom. Irrefutable caselaw explaining the constitutional guarantees that must be given, already shown to Rom over and over, again proves this. The "notice" required to be given Haeg and his wife was not just "notice" that the State had just made off with their ability to provide a livelihood but "notice" that they could protest this stunningly prejudicial act and the State would have to defend to make sure there were no errors. "Notice" also needed to be given that the State would seek to forfeit Haeg's property, so he had his constitutional right to know the charges against him. This is in order a defendant has time and an opportunity to prepare to meet the charges. This "notice" of a hearing and of the case against Haeg was in *addition* to the warrant, which was all that was necessary if the State was *only* seizing *evidence* that was not also *property* -especially property used to provide a livelihood. This "notice" had to *positively* notify Haeg and his wife that before the deprivation of property affected their ability to provide a livelihood, Haeg and his wife were entitled to an adversarial hearing, which could include sworn testimony, to ensure there were no errors in the deprivation – and to positively inform Haeg and his wife that the State intended to forfeit their property. During this hearing the State would have to prove its reasons for depriving Haeg and his wife of their means of livelihood were valid and that the States interest in continuing to deprive Haeg and his wife of their livelihood, even if valid, were greater than the Haeg's interest in providing a livelihood for their family. This is the entire reason for the Alaska Supreme Courts unbreakable "ensemble" – to guarantee that a family will not be deprived of their livelihood in error - as Haeg and his wife undeniably were.

> The United States Supreme Court put the constitutional issue as 'whether these

> statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law.' Justice Stewart, in writing for the majority, said in part: "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified.' . . . It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' . . . The Supreme Court put the constitutional issue as 'whether these statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law. *Sniadach v. Family Fin.Corp.* 395 U.S. 337, 342, 89 S.Ct. 1820,"

How can Rom argue without committing perjury? The U.S. Supreme Court has ruled. Parties whose rights are affected are entitled to be heard; and in order that they may enjoy that right they must be notified.

> The Alaska Supreme Court has ruled: "The standards of due process under the Alaska and federal constitutions require that a deprivation of property be accompanied by notice and opportunity for hearing at a meaningful time to minimize possible injury. When the seized property is used by its owner in earning a livelihood, notice and an unconditioned opportunity to contest the state's reasons for seizing the property must

follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent." *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980).

U.S. Supreme Court in *Mullane v. Central Hanover Bank*, 339 U.S. 396, (1950): "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections ... The notice must be of such a nature as reasonably to convey the required information ... and it must Motion for Reconsideration Page 29 of 47 afford a reasonable time for those interested to make their appearance...But *when notice is a person's due, process which is a mere gesture is not due process.*"

The U.S. Supreme Court has held that it is unconstitutional to require a litigant who has not received notice to file a verified answer in order to vacate a default judgment:

"*[A] judgment entered without notice or service is constitutionally infirm....* Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, "it is no answer to say that in his particular case due process of law would have led to the same result because he had

no adequate defense upon the merits." *Coe v Armour Fertilizer Works*, 237 U.S. 413 (1915). *Peralta v Heights Medical Center, Inc.*, 485 U.S. 80 (1988)." U.S. Supreme Court Justice Harlan, concurring in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) stated, "I think that due process is afforded only by the kinds of "notice" and "hearing" which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor before he can be deprived of his property *or its unrestricted use.* I think this is the thrust of the past cases in this Court."[4]

The Supreme Court of Alaska in *Etheredge v. Bradley,* 502 P.2d 146 Alaska 1972 quoted the U.S. Supreme Court in *Sniadach* "Where the taking of one's property is so obvious, it needs no extended argument to conclude that *absent notice and a prior hearing ... this prejudgment garnishment procedure violates the fundamental principles of due process.*"[5] The Supreme Court of Alaska also mentioned the U.S. Supreme Court decision in *Goldberg v. Kelly*, "The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' ... and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in

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[4] See, e. g., *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 313 (1950).

[5] *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 342, 89 S.Ct. 1820, 1823, 23 L.Ed.2d 349, 354 (1969)

> summary adjudication. Accordingly,... 'consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.'"[6] In *U.S. v Crozier*, 674 F2d 1293 (9th Cir. 1982) the Ninth Circuit vacated an ex pane restraining order, holding that even when exigent circumstances permit an ex pane restraining order, *the government may not wait until trial to produce adequate grounds for forfeiture.*

Haeg and his wife were guaranteed, by two constitutions, that they would receive notice of their right to an adversarial hearing and participation in that same hearing "in days if not hours" to make sure the deprivation was without error. This was not ever done. In fact Haeg asked Trooper Glen Godfrey, on the day much of Haeg's property was seized, when he could get his property back because he had clients coming in the next day and Godfrey responded "never". Haeg never received a hearing or even a response from the judge after motioning her twice if he could bond his property out after having been deprived of it for over a year – again in complete violation of the "ensemble" of guarantees. The reason for the active denial of all this due process is simple – if Haeg was afforded his right to point out everything was based on perjury the prosecution of him would have ended. Rom's statements that Haeg received due process, because Haeg had a right to this hearing but didn't afford himself of it (because it was

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[6] *Goldberg v. Kelly*, 397 U.S. 254, 262-263, 90 S.Ct. 1011, 1018, 25 L.Ed.2d 287, 296 (1970)

hidden in hundreds of thousands of pages of law), are absolutely preposterous and more blatant perjury. Haeg, or anyone else, would be trying to figure out how to make a living now that their primary means had been stripped from them – not searching through law books for some hearing they didn't even know existed.

Rom's statements that Haeg received due process because the State gave "notice" they had seized his property pursuant to a search warrant is also false. The State was required to provide "notice" that they intended to seek forfeiture of Haeg's property – in order that Haeg could prepare to meet that case. This "notice" was required to be in addition to the criminal process against Haeg himself.

Rom's statements that once Haeg was charged Criminal Rule 12 applied and in someway negated Haeg's constitutional rights to due process before being deprived of his property, is also perjury. Criminal Rule 12 applies exclusively to pleadings and motions before trial, not deprivation of property used to provide a livelihood.

Rom's statements that Haeg's "reliance upon case law in *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980) and *Waiste v. State*, 10 P.3d 1141 (Alaska 2000) is misplaced" is also perjury. These cases are ruling in Alaska for the due process protections that must be received before someone is deprived of property, used to provide a livelihood, during a criminal investigation. In his opposition Rom deletes the parts of the rulings that indicate notice of a hearing and forfeiture intent was given so that it appears notice of a hearing or forfeiture did not need to be Motion for Reconsideration Page 32 of 47 given. In American Eagle Rom deletes this part of the case: "the seizure was pursuant to AS 16.05.190-.195" (statutes allowing forfeiture in fish and game cases – never given to Haeg so he would know to

prepare a defense against forfeiture), "The state subsequently *filed a [civil] complaint for forfeiture...*"(which specifically, and in great detail, outlines all rights to hearings, deadlines for those hearings must be given, deadlines for property deprivations, etc, etc. "The vessel was later released [through bonding] for local fishing", and "The other owners indicated they in fact received timely notice of the seizure, for prior to the state's filing of a formal civil complaint...their attorneys mentioned the possibility of suing for release of the vessel."

Rom then unbelievably states, "The court reviewed dicta in *American Eagle and State v. F/V Baranof*, 677 P.2d 1245 (Alaska 1984) and federal law to determine whether the Due Process Clause of the Alaska Constitution would require *more than a prompt post seizure hearing.* Waiste, 10 P.3d at 1147. In deciding this issue in Waiste, the Court stated: '[W}e balance the State's interest in avoiding removal or concealment with the likelihood and gravity of error in the relevant class of cases, and, in so doing, we hold that a blanket rule of ex parte seizure comports with due process.' Id. at 1152. There was no lack of due process an appellants [Haeg's] motion should be denied."

Rom's theory here is utterly fantastic and incomprehensible. The Alaska Supreme Court, ruling here on Waiste's claim that a *preseizure* hearing was required by due process before depriving someone of his or her property in a criminal case, determined that this *preseizure* hearing was not required by due process. The ruling, cited by Rom, clearly holds that a *prompt postseizure* hearing was all that was needed to comply with the Due Process Clause of the Alaska Constitution. *Neither Haeg nor his wife ever received a post seizure hearing – let alone a prompt post seizure hearing*. They never even received notice of such a hearing,

notice of an intent to forfeit their property or any of the other "ensemble of procedural guarantees".

The Alaska Supreme Court merely held that if the State seizes your property in a criminal investigation they do not have to warn you, with a *preseizure* hearing, *before* they do so. But within "days if not hours" *after* seizure you *must* get a hearing to contest the reasons for being deprived of your property, especially property used to provide a livelihood. Prosecutor Rom must be very desperate indeed to utilize such incredible tactics.

Rom, in his footnotes, states, "forfeiture of the aircraft was contemplated at all times throughout the plea negotiations in this case. The return of the aircraft was apparently not a consideration." To Haeg this is interesting because the State, *after* Haeg had placed nearly $1,000,000.00 in detrimental reliance upon a completed Rule 11 Plea Agreement in which the plane was not required to be given up, then "changed their mind", filed far more severe charges than agreed to, and required Haeg to "give them the plane" if he wanted "the same deal". Haeg declined, realizing he was being held hostage and that giving in would only encourage the State to demand more and more (otherwise known as extortion).

Rom states, "the judgments do not reflect the statutory authorization for forfeiture of the aircraft." Haeg knows that under federal law, property cannot be forfeited if notice and authorization of forfeiture is not included in the charging documents. Since this is true in Alaska, and since the judgments do not reflect the statuary authorization, Haeg would like to add these to the plethora of reasons already given for the return of his property.

VI

Rom states that there is no basis in law to support Haeg's request to stay his appeal pending a post-conviction relief procedure and that "policy reasons suggest it would be improper to grant his motion." This again is perjury by Rom. Not only is there basis in law but "policy reasons" demand this be done in many cases. See Alaska Supreme Court ruling in *Risher v. State* 523 P.2d 421:

> "Whether counsel is incompetent usually can be ascertained only after trial ... it may be necessary to remand for an evidentiary hearing on this issue. For example, if on appeal it is contended that trial counsel could have discovered helpful evidence, we might remand for a hearing on that issue. In most such cases, however, the necessity of an appeal & remanded may be avoided by first applying at the trial court level for a new trial or moving for post-conviction relief."

See also the Court of Appeals ruling in *State v. Jones* 759 P.2d 558:

> "Jones also filed a direct appeal challenging his conviction & sentence on unrelated grounds. The appeal was stayed pending resolution of the post-conviction procedure", in *Barry v. State*, 675 P.2d 1292 "we observed that in appeals raising the issue of ineffective assistance of counsel, the trial record will seldom conclusively establish incompetent representation, because it will rarely provide an explanation for the course of conduct that is challenged

> as deficient. We concluded that, 'henceforth we will not entertain claims of ineffective assistance of counsel on appeal unless the defendant has first moved for a new trial or sought post-conviction relief" & in *Grinols v. State* No. A- 7349 "But many states – including Alaska – generally forbid a defendant from raising ineffective assistance of counsel claims on direct appeal. Instead, Alaska & these other states require a defendant to pursue postconviction relief litigation if they want to attack the competence of their trial attorney".
>
> *U.S. v. Fuller No. 00-2023:* "We generally discourage appellants from bringing ineffective assistance of counsel claims for the first time on direct appeal because only rarely is the trial record sufficiently developed for meaningful review. *See United States v. Pergler,* 233 F.3d 1005, 1009 (7th Cir. 2000); *United States v. Martinez,* 169 F.3d 1049, 1052 (7th Cir. 1999)."

Rom then unbelievably claims, "A petition for post conviction relief is a civil matter." This is unbelievably blatant perjury. Criminal Rule 35.1 authorizes petitions for post-conviction relief and there is no post-conviction relief in the Civil Rules. In fact the very name "post-conviction" obviously indicates this because there is no "conviction" under civil law.[7] Rom uses this fiction to advance the theory

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[7] See Rule 35.1. Post-Conviction Procedure. (a) Scope. A person who has been convicted of or sentenced for a crime may institute a proceeding for post- conviction relief under AS 12.72.010 - 12.72.040 if the person claims:

that the evidence gathered during a post-conviction relief procedure would not be allowed in Haeg's appeal – and thus his appeal should not be stayed pending a post-conviction relief procedure. Yet this is the exact reasoning for the vast majority of courts to *require* post conviction relief – so an appeal without an adequate record may move forward after the record is supplemented through a post-conviction relief procedure. Rom cites Appellate Rule 210 in support. Rom again is mistaken - Appellate Rule 217 governs appeals from district court. Rule 217(c) states: "the record on appeal shall consist of the entire district court file, together with recordings of the parts of the electronic record designated by the parties." In other words, all Haeg's post conviction procedures, as by rule they will be conducted, recorded, and filed in the district court, will be admissible on appeal. Rom again uses the perjury that Appellate Rule 210 governs to argue that official proceedings before the Alaska Bar Association, district court representation hearing, and Alaska Commission on Judicial Conduct are "*excluded* by this rule." As Haeg already explained Rule 217 governs and *allows* the addition of these proceedings by stating, "*Unless otherwise ordered by the court of appeals*, the record on appeal shall consist of the entire district court file..." Also, Haeg again maintains it is blatant corruption that the Court of Appeals is not allowing Haeg's representation hearing to remain part of the record in Haeg's case. The sworn testimony in this hearing, especially that by Haeg's third attorney, was stunning. To continue to scrub the district court record clean of all evidence of the misconduct of Haeg's attorneys, the State, and Haeg's judge is of absolute devastation to Haeg. How can Haeg ever show the corruption in his case when at every turn the evidence of it is wiped from the record?

Rom has the gall to state, "Since the items he wants to include in the record would not advance his appeal, his

motion should be denied." So Rom does not think that when Haeg's attorneys are proven, while under oath, that they have been actively representing the State's interests against Haeg and their own interests against Haeg by working together to hide this from Haeg that this would not advance Haeg's appeal? That the formal investigation into the personal relationship between Haeg's judge and the main investigating trooper and witness against Haeg would not advance Haeg's appeal? Exactly what would advance Haeg's appeal according to Rom?

VII

Rom, in considering the issue of modifying Haeg's sentence from a revocation to a suspension, for once agrees; stating this was overlooked because the form differed from the law. Yet he opposes doing this by motion and requests that Haeg do so by amending his appeal and waiting for it to be decided before it takes effect. Again Haeg would be horribly prejudiced by this delay – much to the State's benefit and delight.

Rom, in asking this court to deny Haeg's ability to guide during his appeal states, "The trial court was in the best position to determine whether appellant should be permitted to act as a guide during his appeal. The trial court rejected his request." Rom apparently expects the Court of Appeals to conveniently overlook the fact Haeg's conviction and sentence was obtained through fraud before Haeg's judge and jury; and this very fraud was specifically articulated on the record by the sentencing judge as the reason for Haeg's harsh sentence. Haeg wishes to know exactly why Rom fails to challenge Haeg's claims in this regard, because Rom cannot, and to do so would mean more perjury by Rom and further the fraud intentionally committed to harm Haeg and his family. The reasons given

for Haeg's sentence by the sentencing judge, because Haeg's conviction and sentence was obtained through fraud, cannot be considered by this Court of Appeals, thus his license should not be suspended/revoked during his appeal.

Conclusion

It is overwhelming obvious to everyone involved Haeg and family have been absolutely crushed beyond recognition by a runaway prosecution. If you look at the entire process, as Haeg and family have to do every day, it is incomprehensible something so disastrous and so fundamentally unfair could actually take place in America. It is not what Rom claims in the State's opposition that is the most frightening – it is what Rom doesn't claim. There is not a word denying that the State made a Rule 11 Plea Agreement to induce Haeg and his family to give up guiding for an entire year, to give a five hour interview, and to fly in numerous witnesses from around the United States. There is no denial that the State broke this Rule 11 Plea Agreement only five business hours before it was to be completed – by filing charges far more severe than those agreed to. There is no denial that the State broke the Rule 11 Plea Agreement after Haeg and family's opportunity to guide and make a living for a whole year was past. There is no denying the State used Haeg's statements, made for the Rule 11 Plea Agreement the State broke, to file all the charges in his case. There is no denial the search warrants were based upon knowing, intentional, misleading and amazingly prejudicial perjury. There is no denial that this same perjury continued at Haeg's trial, *after* Haeg had told the prosecution about it at his taped five-hour interview. There is no denial the judge specifically articulated this perjury as the basis for her harsh sentence of Haeg. Each and every one of these individual violations is enough to reverse Haeg's conviction with prejudice.

Adding to what makes all this so chilling is that all of Haeg's attorneys have done far more than even the prosecution to cover all this up. Haeg has all his attorney's, on tape, claiming it didn't matter that the State did all this and "there is nothing that can be done about it." Haeg is further panicked when he reads the Court of Appeals discussion in Smith v. State 717 P.2d 402:

> "We are particularly troubled by the apparent failure of both Smith's counsel and counsel for the state to disclose the substance of the negotiated plea agreement to the trial court during Smith's change of plea hearing. Similarly disturbing is the failure of Smith's counsel to disclose to the court the fact that Smith had expressed qualms about following through with this agreement. Even in the absence of withdrawal by defense counsel, such disclosures would at least have enabled the trial court to inquire on the record into Smith's understanding of the agreement and to give appropriate advice concerning the extent to which the agreement limited Smith's procedural options."

Haeg demanded, over and over, for the Rule 11 Plea Agreement, and all he had done in reliance on it, to be brought up numerous times – yet he was lied to by his attorneys over and over and over (on tape) about his right to enforce it or bring it to the courts attention. Haeg finally got so upset he paid for a subpoena for his first attorney (who did not enforce the Rule 11 Plea Agreement when it was first broken and told Haeg it could not be enforced) to appear and explain this at Haeg's sentencing, paid for it to

be successfully delivered, paid for witness fees, paid for an airline ticket to McGrath, paid for a hotel room and then the attorney never showed up. Haeg's second attorney told Haeg (on tape), "He didn't come because his testimony wasn't relevant to your guilt." Haeg told the second attorney, "I had already been found guilty, I subpoenaed him to my sentencing and his testimony would have been relevant to my sentence *and you know it.*"

In the Smith case above the defendant had got what he bargained for – the ability to go to trial on only one charge and if he were found innocent the second charge would be dropped; if he were found guilty he would plead guilty to the second charge. His attorney, after he was found guilty on the first charge thought he had to plead guilty to the second charge – as agreed. The Court of Appeals held this is not the case – and since he plead guilty because of his attorney's erroneous advice – overturned his conviction. What should happen in Haeg's case? Instead of an attorney with the integrity to think his client should honor his bargains, Haeg has an attorney who helps the State forcefully and maliciously take away Haeg's constitutional right to have the bargain he paid for enforced. Haeg has his attorneys on tape telling him they couldn't enforce the Rule 11 Plea Agreement. Then Haeg has the first one perjuring himself 17 times before the Alaska Bar Association when he tried to claim he had told Haeg he could enforce the Rule 11 Plea Agreement but "Haeg didn't want to". This was very difficult task as the Alaska Bar Association allowed in as evidence the tapes and transcriptions that Haeg had of this same attorney telling Haeg the Rule 11 Plea Agreement could not be enforced. When Haeg had this attorney read the transcriptions, while under oath, they would shake so hard he could hardly do so. The amount of effort to cover all this up and the effectiveness with which this happens is

terrifying. Haeg, just to be on the safe side, has distributed tapes and CD of everything in multiple, widely separated vaults.

The State (and the courts in at least Haeg's case) relies heavily on someone's financial and mental weakness to wear them down and make them forgo the formidable protections of their constitutional rights. Yet Haeg, now that he is doing almost all of his own litigation and begins to understand and utilize the power of the U.S. constitution and law, including the specific powers against corruption, can, will, and must (for the future his beautiful wife and daughters) last indefinitely. The case against Haeg started because the State of Alaska failed to manage game in direct violation of its own constitution; and Haeg and family relied, with everything they had in life, on this constitutionally guaranteed management. Because of animal right activists, media coverage, and the resulting political fear the prosecution of Haeg morphed into something far more akin to a witch-hunt than the fundamentally fair proceedings guaranteed by multiple constitutions – bolstered no doubt by the corruption that has come to light. It is overdue to end the "farce and mockery" that has been the cornerstone of Haeg's prosecution before more damage is done. Haeg can see that the "immense pressure" brought to bear against him will keep adding to the number of careers ultimately ruined. Haeg will remain unwavering, as he has understood for quite some time that all he must do is not miss any filing deadlines, not get maneuvered out of his appeal and/or post-conviction relief procedure, carefully continue recording the plethora of constitutional violations and criminal actions against him, preserve his right to appeal to the federal courts, and the U.S. and Alaska constitutions will see him and his family through very successfully. He does not wish the "immense pressure" to keep adding more

innocent souls to the trap created when those charged with protecting Haeg's rights violate them instead while trying to free those already caught

It was very illuminating and a very deep breath of fresh air/sanity, when Haeg first contacted the U.S. Department of Justice in Washington D.C., to learn that the exact type of corruption Haeg has run into (defense attorneys, law enforcement, prosecutors, and/or judges working together to defraud ignorant defendants) is not uncommon. It happens on a regular basis in those parts of the U.S. (primarily Arkansas, Kentucky, Oregon and Louisiana) that have relatively small, isolated populations utilizing the same legal players over and over. Haeg was told this corruption had never been recorded in Alaska but that Alaska fit the profile exactly. To Haeg the numerous comments of "big state – small pool", made when he was unsuccessfully trying to hire attorney number four after he had fired attorney number three, finally made sense.

More and more puzzling things are beginning to make sense to Haeg. Take the brutal fight Haeg had during remand of his case from the Court of Appeals to the district court to determine if Haeg knowingly and intelligently waived his right to counsel and if he was competent to represent himself on appeal. Haeg claimed all of his attorney's, including the one he had just fired but was still his attorney of record (Osterman), were actively representing the State's interests instead of his own. Haeg asked Osterman to file motions and oppositions to Rom's motions. When Osterman refused (on tape) to do so Haeg filed these pro se. The State objected, stating Haeg was represented by counsel and thus was precluded from representing himself. In addition the State filed to strike Haeg's motions and included affidavits from the record. Haeg, in a motion to this Court of Appeals, asked

permission to represent himself because his counsel refused to represent him and he had a constitutional right to a defense, even if it was only himself, during the remand of his case. This Court of Appeals denied Haeg's motion, stating he was already represented – even though Haeg had included affidavits that Osterman had refused on tape to represent him. The district court granted all these unopposed motions of the State, including the one to strike from the record everything Haeg had filed. In light of this gross and fundamental breakdown in the adversarial system Haeg filed a motion to this Court of Appeals to reconsider their ruling denying him the right to any representation during remand. This Court of Appeals again denied Haeg – actively and intentionally denying Haeg any representation whatsoever during the remand of his case. The prejudice this caused is tremendous. All record that Haeg needed to conduct a successful appeal has been wiped away because this Court of Appeals made sure there was no one at the wheel of Haeg's defense to oppose the State's motions doing this. This Court of Appeals never addressed the prejudice their rulings caused Haeg or discussed any prejudice, if any, to the State. It is of interest to Haeg that anyone can request to be co-counsel while represented by an attorney – which allows him or her to act in the same capacity as if they were pro se. If this is the case why did the Court of Appeals refuse Haeg any representation during remand in which the State did so much damage because of this absence of representation?

Haeg was allowed to question Osterman under oath, but when Osterman claimed he needed to go, the court released him after stating on the record Haeg reserved his right to recall him. The testimony Osterman gave under oath was stunning – collaborating all Haeg's allegations of collusion/conspiracy between the State and Haeg's attorneys – and proving it was an intelligent decision for

Haeg, totally ignorant of the law, to proceed pro se. Then, when Haeg asked to continue his questioning of Osterman under oath as the court itself stated he had reserved the right to do, the court refused. This again was of immense prejudice to Haeg, as Haeg was unable to finish gathering the stunning evidence of this collusion/conspiracy between his own attorney's and the State.

Haeg knows that he is not an attorney and realizes that much, or even most, of the opposition to him, his motions, and to his quest for justice is because of this fact. With the stakes so unbelievably high much will be gambled in the knowledge Haeg has a good chance of failing. Yet Haeg realizes, as many possibly don't, that justice is not and cannot be reserved just for those represented by an attorney. Just because "esquire" doesn't appear behind Haeg's name doesn't mean he isn't allowed to enforce his rights. Haeg has incentive like no other attorney alive to be innovative, tough, and flat out persistent. Haeg has been at the top of the field in every endeavor he has put his mind to and this has his entire undivided attention. He knows this is the fight of his and his family's life and to be successful he must see it to an end. The fact that one third of the cases pending before the United States Court of Appeals, Ninth Circuit, are from pro se appellants is of great inspiration to Haeg. In addition to this Haeg, in reading thousands upon thousands of cases, has yet to come across a single case in which one tenth as much injustice has occurred. Haeg cannot possibly imagine what a federal court will think when they start reading his case – never has a case contained such an ongoing, perverted, and fundamental breakdown in justice.

Haeg will die trying before he lets this kind of corruption live. The United States Constitution and the safety of Haeg's family demand no less.

These motions and requests are supported by the accompanying affidavits, documents, and by the motions, memorandum, affidavits, and supporting documents that were already delivered by hand to this court on November 6, 2006.

RESPECTFULLY SUBMITTED this 27th day of November 2006.

"s/"

David S. Haeg, Pro Se Appellant

November 8, 2006 - In the Court of Appeals of the State of Alaska, Haeg v. State, Order, No. A-9455.

Memorandum of Law

I. Introduction

Appellant was convicted at jury trial for various misdemeanor offenses alleging violations of Title 8, 11 and 16, and regulations promulgated under those statutes. He was sentenced on September 30, 2005, by District Court Judge Margaret L. Murphy for the nine counts upon which he was found guilty. Counts I through V were convictions for Unlawful Acts by a Guide for Taking Game on the Same Day Airborne (AS 8.54.720(a)(15), Counts VI and VII for Unlawful Possession of Game (5AAC 92.140(a), Count VIII for Unsworn Falsification (AS 11.56.210(a)(2), and Count IX for Trapping in a Closed Season (5 AAC 84.270(14). He timely filed his notice of appeal.

After various extensions of time to file appellant's brief, appellant substituted attorneys. On April 16, 2006, appellant moved for a stay of the forfeiture and his license suspension pending appeal in this court. The State opposed his request and on May 16, 2006, this court granted the stay of the order of the trial court imposing restitution, but denied the motion to stay the order of the trial court suspending appellant's guide license and forfeiture of his airplane. Thereafter, appellant sought an order of this court for permission to represent himself.

On June 23, 2006, this court remanded the case to the district court to determine whether appellant knowingly and intelligently waived his right to counsel and whether he was competent to represent himself on appeal.

Following the recommendation of the trial court, this court granted appellant's request to represent himself in his appeal.

This court's order of June 23, 2006, denied without prejudice appellant's motion for reconsideration of the order denying a stay on the suspension of his guide license and forfeiture of his aircraft. On September 21, 2006, this court denied appellant's motion to supplement the record. However, the basis for the court's denial was that the filing was premature since the court had not yet determined that appellant could represent himself on appeal. Therefore, it appears that he has now properly brought before the court the issue of reconsideration of the stay on his guide license and forfeiture of his aircraft and his request to supplement the record. The court has directed the State to respond by November 8, 2006. The State opposes the Appellant's request.

I. Legal Argument.

A. Appellant's emergency motion for return of property and to suppress evidence should be denied.

Appellant seeks an order of this court directing .the State to return evidence lawfully seized and forfeited in this case. He claims that he needs a court order because he intends to confront the troopers on November 16, 2006, demanding return of the evidence.

Appellant's argument is essentially a due process argument. He claims that the State was required to provide him with a hearing so he could challenge the search warrant which led to the collection of the evidence and eventual forfeiture in the judgment of conviction. Because he is both legally and factually mistaken, his motion should

be denied. Additionally, it is questionable whether this court is the proper forum to grant the relief requested.

According to the police report, the Aniak District Court authorized two search warrants which appear to apply to appellant's arguments. Search warrant 4MC-04-002SW permitted the troopers to search appellant's residence in Soldotna, as well as his hangar and outbuildings for evidence pertaining to his illegal taking of wolves. Search warrant 4MC-04-003SW permitted the search and seizure of appellant's Piper Pa-12 Supercruiser aircraft for evidence, also pertaining to the illegal taking of wolves. On April 1, 2004, the warrants were executed and a copy of the warrant and inventory was left with appellant at his residence. The return was properly filed with the Aniak District Court. Appellant was eventually charged with the crimes for which he was convicted. He was represented by counsel in the criminal case.

A criminal case is procedurally governed by the Alaska Rules of Criminal Procedure. Criminal Rule 37 addresses search warrants. Subsection (c) provides:

> **Motion for return of property and to suppress evidence**. A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

Since appellant was served with the search warrant he had notice that the State had seized his property pursuant to a warrant. Criminal Rule 37 (c) provided a

mechanism for him to challenge the lawfulness of the seizure. Whether he exercised his right or not is irrelevant. The law provided due process for him to do so if he made that choice. Once he was charged, Criminal Rule 12 applied. Subsection (b) regulates pretrial motions and permits a defendant to challenge the evidence which may be used against him at trial. Alaska Criminal Rule 12(b)(3) specifically provides a mechanism for a defendant charged with a crime to suppress evidence on the ground that it was illegally obtained. Failure to move to suppress evidence constitutes a waiver. Criminal Rule 12(e) provides:

> **Effect of failure to raise defenses or objections**. Failure by the defendant to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to section. (c), or prior to any extension thereof made by the court, shall constitute waiver thereof but the court for cause shown may grant relief from the waiver.

Again, it is irrelevant whether the defendant chose to exercise his right or not. The law provided a mechanism for him to do so and his due process rights were satisfied. Apparently his attorney did not seek suppression and this court should not be in a position to second guess the decision. It is also legally irrelevant whether the defendant personally assented to the attorney's tactical decision not to seek suppression. Beltz v State, 895 P.2d 5 13 (Alaska App. 1995); see Cornwall v. State, 909 P.2d 360 (Alaska App. 1996).

Appellant claims that the State was required to provide him with more process I than this. He claims that the State was required to provide him with a hearing

immediately upon seizure of his property. However, his argument fails because he relies upon the civil rules which necessarily do not apply to the criminal case. Specifically, his reliance on Alaska Rule of Civil Procedure 89 is misplaced. Civil Rule 89 pertains to prejudgment attachment, and the very first sentence states: "After a civil action is commenced, the plaintiff may apply to the court to have the property of the defendant attached under AS 09.40.010-110 as security for satisfaction of a judgment that may be recovered." No civil action commenced and appellant's reliance on other portions of the rule is simply misplaced.

Because appellant misconstrues the procedural rules, his reliance on the case law is also misplaced. Appellant relies upon two cases in support of his argument: F/V American Eagle v. State, 620 P.2d 657(Alaska 1980) and Waiste v. State, 10 P.3d 1131 (Alaska 2000). Both of these cases indicate that the procedural protections granted by the criminal rules and as they were followed here, satisfies a defendant's right to due process. In F/V American Eagle the court recognized that both the Alaska and Federal Constitutions require notice and an opportunity for hearing at a meaningful time when property is seized. In that case the court found that the owners of the vessel were provided sufficient due process because the vessel was seized pursuant to a judicially authorized warrant, the vessel owners were formally notified of the State's action, and the vessel owners had "an immediate and unqualified right to contest the State's justification for the seizure before a judge under Criminal Rule 37 (c)." F/V American Eagle, 620 P.2d at 677.[1] In Waiste the court revisited some of the issues raised in F/V

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[1] A review of the file suggests that forfeiture of the aircraft was contemplated at all times throughout the plea negotiations in this case. The return of the aircraft was apparently not a consideration.

American Eagle including seizure and forfeiture of a fishing vessel where the criminal charges resulted in acquittal, but the State still could have proceeded with a civil forfeiture. The court reviewed dicta in American Eagle and State v. F/V Baranof; 677 P.2d 1245 (Alaska 1984) and federal law to determine whether the Due Process Clause of the Alaska Constitution would require more than a prompt post seizure hearing. Waiste, 10 P.3d at 1147. In deciding this issue in Waiste, the Court stated: "[W]e balance the State's interest in avoiding removal or concealment with the likelihood and gravity of error in the relevant class of cases, and, in so doing, we hold that a blanket rule of ex parte seizure comports with due process." Id. at 1152.

There was no lack of due process and appellants motion should be denied.[2]

B. Opposition to Motion to Stay Appeal Pending Post Conviction Relief Procedure

Appellant seeks an order staying his appeal so that he may file a petition for post conviction relief. There is no basis in the law for to support appellant's request and policy reasons suggest it would be improper to grant his motion.

A petition for post conviction relief is a civil matter. Conclusion of appellant's post conviction relief case could be years away. If by chance he concluded his post conviction relief matter and returned to his appeal, and the court

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[2] Although the judgments do not reflect the statutory authorization for forfeiture of the aircraft, and appellant does not directly raise this in his brief, AS 16.05.190-.195 and AS 08.54.720(f)(4)authorize forfeiture upon conviction. See Waiste, 10 P.3d at 1152-53.

granted an appeal overturning his conviction, the State would be in the unenviable position of having to retry a case that would be several years old. There is substantial prejudice to the State in the event his were to unfold, including loss of witnesses and the impact of time on the memory of witnesses.

Moreover, appellant's reason behind this request for a stay is to gather additional evidence upon which he hopes to base his appeal. None of the evidence he generates in a post conviction relief procedure would be permitted to be included in the record on appeal in this case. This appeal has to do with his criminal trial and the record on appeal is already complete. See Alaska Rule of Appellate procedure 210.

Appellant seems to recognize that he is unable to bring his ineffective of counsel claim before this court on a direct appeal. For this reason, he has essentially argued that his appeal is fruitless. If that is the case, and because his sole interest is in furthering an ineffective assistance claim, then he should dismiss his appeal and file his petition for post conviction relief.

C. Opposition to Motion to Supplement the Record

Appellant seeks to supplement the record with matters that were not before the trial court, including proceedings before the Alaska Bar Association, appellant's representation hearing on remand, and proceedings before the Alaska Commission on Judicial Conduct.

Alaska Rule of Appellant Procedure 210 governs this request. Subsection (a) states:

> **Composition of record**. The record on appeal consists of the entire Superior Court file, including the original papers and exhibits filed in the Superior Court, and the electronic records of proceedings before the Superior Court.

All of the items appellant seeks to include in the record are excluded by this rule. Since the items he wants to include in the record would not advance his appeal, his motion should be denied.

D. Opposition to Motion for Summary Judgment Reversing Conviction With Prejudice

Appellant seeks summary judgment in his appeal. He misconstrues Alaska Rule of Appellant Procedure 214. Rule 214 applies to summary disposition, not summary judgment. Apparently, appellant believes he can demonstrate with supporting affidavits that he is entitled to summary judgment pursuant to Alaska Rule of Civil Procedure 56. Because there is no legal basis for the court to grant the relief appellant requests, his motion should be denied.

E. Opposition to Motion to Correct and Stay Guide License

Appellant raises two issues in this motion. First, he claims that the trial court should have suspended his license, rather than revoke it for five years. Second, he again seeks a stay on his license suspension.

Modification of the sentence from revocation to suspension should not be brought by motion. Rather, appellant should have included this issue in his points on

appeal. The State would not oppose the court permitting appellant to revise his points on appeal to raise this single issue. The judgment states, as appellant claims, that his license is revoked for a five year period. The judgment is a prepared form, and it does not appear that the trial court considered the distinction between revocation and suspension when it entered its order. Since AS 08.54.720(f)(3) requires the court to order the [big game commercial services] board "to suspend the guide license ... for a specified period of not less than three years, or to permanently revoke the guide license" upon conviction for taking game while same day airborne, appellant at least raises a colorable argument.

Appellant also seeks to stay his guide license suspension. The State opposes this request. Appellant made this request in the trial court and it was denied. He made this request through counsel in this court and it was denied. After his motion for reconsideration was filed, his attorney withdrew and it appears that this court has not addressed his motion for reconsideration. Alternatively, the court has permitted him to renew his motions. The court should deny his request and permit the license suspension to continue during his appeal.

The trial court was in the best position to determine whether appellant should be permitted to act as a guide during his appeal. The trial court rejected his request. Appellant was duly convicted by a jury of his peers and the court found that it was in the public interest to suspend his guide license. Appellant was convicted of multiple counts of violating fish and game laws, and taking game on the same day one was airborne is one of the more egregious wildlife violations under the fish and game code. Guides are held to a certain standard of conduct and are expected to maintain ethical and professional conduct in their affairs. Appellant

failed to adhere to one of the host basic principals in hunting: fair chase. Additionally, he engaged in the taking of nine wolves out side of the permitted area in a controversial predator control program. It would not be in the public's interest for appellant to continue to operate as a big game guide based on his practice of engaging in illicit conduct involving wildlife laws.

Dated this 8th day of November, 2006 at Anchorage, Alaska.

DAVID W. MARQUEZ
ATTORNEY GENERAL

By: "s/"
Roger B. Rom
Assistant Attorney General
Alaska Bar No. 901 1128

November 6, 2006 - In the Court of Appeals of the State of Alaska, Haeg v. State, Order, No. A-9455.

EMERGENCY MOTION FOR RETURN OF PROPERTY & TO SUPPRESS EVIDENCE

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case and hereby files the following emergency motion for return of property & to suppress evidence in accordance with *Alaska Rules of Appellate Procedure Rule No. 504(d)(f)* and with: *Alaska Rules of Criminal Procedure Rule No. 37(c)*:

> "A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized."
>
> See also *Waiste v. State*: "...Criminal Rule 37(c) hearing, in which a property owner can contest the basis for a seizure."[1]

Haeg and his wife have had property, which they use as the primary means to provide a livelihood, seized, held, and forfeited in direct violation of the due process clauses of the Alaska and the U.S. constitutions. This property was seized in March and April of 2004 and neither David or Jackie Haeg have ever been given their due process rights in the years since, even though the Alaska Supreme Court ruled they had to be provided "notice and an unconditioned

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[1] See *Waiste v. State*, 10 P.3d 1141 (Alaska 2000).

opportunity to contest the state's reasons for seizing the property ... within days, if not hours ".[2] David and Jackie Haeg need a decision in hand by November 16, 2006 or a decision delivered to the Evidence Custodian of the Alaska State Troopers at 5700 E. Tudor Road, Anchorage, AK 99507-1225, phone number (907)269-5761 by 1:00 p.m. November 17, 2006. On November 17, 2006 David and Jackie Haeg will be driving from their home in Soldotna to Anchorage to effect possession of their property, which was seized, held, and forfeited in clear violation of law, rule, and constitution. Every day that David and Jackie Haeg are illegally deprived of this property causes them irreparable harm by directly affecting their ability to provide a livelihood for their two daughters.

All grounds advanced in support of this motion were submitted to the trial court and the first of several motions were filed on July 18, 2006. Assistant Attorney General Roger Rom (Rom) opposed Haeg's motion on September 22, 2006. The trial court subsequently refused to rule upon the motion. Rom was called and talked to on 10/30/06 about this emergency motion being filed with this court. He expressed he will oppose this motion and wants an opportunity to do so although in essence Rom has already responded to this motion, although not to this court, through his opposition to motion and request for evidentiary hearing and oral argument (a copy of which is included for this courts review).

In Rom's opposition he entirely misses the point. The point is not that Haeg is trying to exert what Rom calls a "waived" right to challenge evidence according to *Rule 12(b)(3)* – even though Haeg can and will do this later through the rubric of ineffective assistance of counsel, he

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[2] See F/V American Eagle v. State, 10 P.3d 1141 (Alaska 1980)

had good cause, and it was plain error. The point (by law and constitution) is that when *property* (even though the State may claim it is "evidence") is seized, especially when the *property* seized is used to provide a livelihood, an "ensemble of procedural rules bounds the State's discretion...and limits the risks and duration of harmful errors"(Alaska Supreme Court).[3] The Alaska Supreme Court has held this ensemble includes that "[T]he standards of due process under the Alaska and federal constitutions require that a deprivation of property be accompanied by notice and opportunity for hearing at a meaningful time to minimize possible injury. When the seized property is used by its owner in earning a livelihood, notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest is urgent."[4]

Neither Haeg nor his wife Jackie, who both owned the seized property and both used it as the primary means to earn a livelihood, were *ever* given any of these procedures. In not being given these procedures both Haeg and his wife were harmed immeasurably.

There are no debatable issues of fact as Haeg has described in the Motion for Summary Judgment, Motion for Emergency Hearing, and Reply to Opposition and request for Evidentiary Hearing and Oral Argument and included supporting affidavits – which the District Court has also failed to rule upon.

Haeg also points out a further Alaska Supreme Court holding in *F/V American Eagle v. State*, "As a

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[3] See *Waiste v. State* 10 P.3d 1141 (Alaska 2000).

[4] See *F/V American Eagle v. State*, 10 P.3d 1141 (Alaska 1980).

general rule, forfeitures are disfavored by law, and thus forfeiture statutes should be strictly construed against the government". The State failed to follow *any* of the "ensemble of procedural rules" specifically required. They never gave Haeg or his wife any of the constitutional guarantees specifically mandated by both the Alaska Supreme Court and the U.S. Supreme Court.

The specific written requirements in Alaska to comply with these rulings are found in the *Alaska Rules of Civil Procedure* – as property seizures and forfeitures, although of "quasi-criminal nature"[5], are "civil in form". In fact there is no mention at all of the due process requirements for seizing and forfeiting property in the *Alaska Rules of Criminal Procedure* although Alaska Statutes *authorize* property seizures and forfeitures in Fish and Game criminal prosecutions under:

> *AS 16.05.190*: "[Property] seized under the provisions of this chapter or a regulation of the department, unless forfeited by order of the court, shall be returned, after completion of the case and payment of the fine, if any."
>
> *AS 16.05.195*: "[Property] used in or in aid of a violation of this title or AS 08.54, or regulation adopted under this title or AS 08.54, may be forfeited to the state. (1) upon conviction of the offender in a criminal proceeding of a violation of this title or AS 08.54 in a court of competent jurisdiction; or (2) upon judgment of a court of competent jurisdiction in a proceeding in rem that an item specified above was used in or in aid of

[5] See *Graybill v. State*, 545 P.2d 629 (Alaska 1976).

a violation of this title or AS 08.54 or a regulation adopted under this title or AS 08.54".

Thus, although authorized as an additional punishment for a criminal conviction, a property seizure and forfeiture [attachment], even when ancillary [secondary] to a criminal proceeding, must follow civil rules. In Alaska forfeiture of seized property is obtained through the remedy of *attachment*. This is the only method published in Alaska:

> *Alaska Rules of Criminal Procedure Rule 54*: Process – "Process issued in all criminal actions in the superior court shall be issued, and return thereon made, in the manner prescribed by *Rule 4, Rules of Civil Procedure."*
>
> *Alaska Rules of Civil Procedure Rule 4:* "(c) *Methods of Service - Appointments to Serve Process* - (3) *Special appointments for the service of all process relating to remedies for the seizure of* persons or *property pursuant to Rule 64* or for the service of process to enforce a judgment by writ of execution shall only be made by the Commissioner of Public Safety after a thorough investigation of each applicant, and such appointment may be made subject to such conditions as appear proper in the discretion of the Commissioner for the protection of the public. A person so appointed must secure the assistance of a peace officer for the completion of process in each case in which the person may encounter

physical resistance or obstruction to the service of process."

Alaska Rules of Civil Procedure Rule 64: "At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by law existing at the time the remedy is sought. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by law the remedy is ancillary to an action or must be obtained by an independent action."

Alaska Rules of Civil Procedure Rule 89: *Attachment* "(b) *Motion and Affidavit for Attachment.* The plaintiff shall file a motion with the court requesting the writ of attachment, together with an affidavit showing... (m) *Ex Parte Attachments.* The court may issue a writ of attachment in an ex parte proceeding based upon the plaintiff's motion, affidavit, and undertaking only in the following extraordinary situations: (1) *When Defendant Non-Resident.* In an action upon an express or implied contract against a defendant not residing in the state, the court may issue an ex parte writ of attachment only when necessary to establish jurisdiction in the

court. To establish necessity, the plaintiff must demonstrate that personal jurisdiction over the defendant is not readily obtainable under AS 09.05.015. (2) *Imminence of Defendant Avoiding Legal Obligations.* The court may issue an ex parte writ of attachment if the plaintiff establishes the probable validity of the plaintiff's claim for relief in the main action, and if the plaintiff states in the affidavit specific facts sufficient to support a judicial finding of one of the following circumstances: (i) The defendant is fleeing, or about to flee, the jurisdiction of the court; or (ii) The defendant is concealing the defendant's whereabouts; or (iii) The defendant is causing, or about to cause, the defendant's property to be removed beyond the limits of the state; or (iv) The defendant is concealing, or about to conceal, convey or encumber property in order to escape the defendant's legal obligations; or (v) The defendant is otherwise disposing, or about to dispose, of property in a manner so as to defraud the defendant's creditors, including the plaintiff. (3) *Defendant's Waiver of Right to Pre-Attachment Hearing.* The court may issue an ex parte writ of attachment if the plaintiff establishes the probable validity of the plaintiff's claim for relief in the main action, and if the plaintiff accompanies the affidavit and motion with a document signed by the defendant voluntarily, knowingly and intelligently waiving the constitutional right to a hearing before prejudgment attachment of the property. (4) *The Government as Plaintiff.* The court may issue an ex parte

writ of attachment when the motion for such writ is made by a government agency (state or federal), provided the government plaintiff demonstrates that such ex parte writ is necessary to protect an important governmental or general public interest. (n) *Execution, Duration, and Vacation of Ex Parte Writs of Attachment.* When the peace officer executes an ex parte writ of attachment, the peace officer shall at the same time serve on the defendant copies of the plaintiff's affidavit, motion and undertaking, and the order. No ex parte attachment shall be valid for more than seven (7) business days (exclusive of Saturdays, Sundays, and legal holidays), unless the defendant waives the right to a pre-attachment hearing in accordance with subsection (m) (3) of this rule, or unless the defendant consents in writing to an additional extension of time for the duration of the ex parte attachment, or the attachment is extended, after hearing, pursuant to section (e) of this rule. The defendant may at any time after service of the writ request an emergency hearing at which the defendant may refute the special need for the attachment and validity of the plaintiff's claim for relief in the main action... (p) *Duration and Vacation of Writs of Attachment Issued Pursuant to Hearing.* A writ of attachment issued pursuant to a hearing provided for in section (c) of this rule shall unless sooner released or Emergency Motion For Return of Property & to Suppress Evidence Page 8 of 16 discharged, cease to be

> of any force or effect and the property attached shall be released from the operation of the writ at the expiration of six (6) months from the date of the issuance of the writ unless a notice of readiness for trial is filed or a judgment is entered against the defendant in the action in which the writ was issued, in which case the writ shall continue in effect until released or vacated after judgment as provided in these rules. However, upon motion of the plaintiff, made not less than ten (10) nor more than sixty (60) days before the expiration of such period of six (6) months, and upon notice of not less than five (5) days to the defendant, the court in which the action is pending may, by order filed prior to the expiration of the period, extend the duration of the writ for an additional period or periods as the court may direct, if the court is satisfied that the failure to file the notice of readiness is due to the dilatoriness of the defendant and was not caused by any action of the plaintiff. The order may be extended from time to time in the manner herein prescribed."

The state never obtained a writ of attachment [forfeiture] as required by rule, never served such writ upon Haeg as required by rule, never gave Haeg his "constitutionally guaranteed" notice, never gave Haeg his "constitutionally guaranteed" hearing "within in days if not hours" in 930 days let alone within the constitutionally mandated seven (7) business days, never applied for an extension within two and one half (2½) years let alone the mandated six (6) months as required by rule from time of seizure to time of notice of readiness of trial or to time of

judgment, and never gave him his right to an "emergency hearing", even after he asked for it, as required by rule. Jackie Haeg was denied these same constitutionally guaranteed procedures.

The above rules describe the procedure Alaska has to seize and forfeit someones property while guaranteeing them their constitutional rights. It is in addition to the process for seizing evidence.[6]

> "[A] judgment entered without notice or service is constitutionally infirm... Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, 'it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits'."[7]

The obvious reason the State did not afford Haeg his constitutional right to a hearing in the first place is he would have no doubt prevailed upon the merits and ended any further prosecution. All the search warrants were based upon intentionally misleading and unbelievably prejudicial perjury, this would have been exposed during a hearing, and this would have ended any criminal prosecution.

Trooper Gibbens testified on the search warrant affidavits, under penalty of perjury, that the suspicious sites he investigated were in Unit 19C, and that Haeg's lodge, that he "used for guided hunts" and that "there is a clear economic incentive for Haeg... to eliminate or reduce

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[6] See *Waiste v. State* 10 P.3d 1141 (Alaska 2000).

[7] See *Peralta v Heights Medical Center, Inc.*, 485 U.S. 80,87 (1988) & *Coe v Armour Fertilizer Works*, 237 U.S. 413, 424 (1915).

predators from this area, which could potentially increase numbers of trophy animals for them to harvest with clients", was in 19C (leading everyone, including the judge issuing the search warrants, to believe Haeg was a suspect and that the suspicious sites involved a big game guiding violation and had nothing to do with the Wolf Control Program). In fact all the sites that Trooper Gibbens investigated were in Unit 19D, the unit which the Wolf Control Program was being conducted and where Haeg had never hunted, guided, or ever been licensed to guide. Trooper Gibbens and Prosecutor Scot Leaders **taped** Haeg telling them this during the interview Haeg gave them for the Rule 11 Plea Agreement. Then, after Prosecutor Leaders broke the agreement and forced Haeg to trial on big game guiding charges rather than some Wolf Control Program violation (a conviction of which could not affect Haeg's guide business), he asked for and accepted sworn testimony from Trooper Gibbens in front of Haeg's judge and jury that sites he investigated were in GMU 19C. Then Judge Murphy uses this continued perjury to justify Haeg's unbelievably harsh sentence of taking his business away for six (6) years and his business property forever, saying it was because, "the majority if not all the wolves were taken in 19C ... where [Haeg was] hunting." Even more unbelievable is when Haeg filed a complaint of this continuous perjury that harmed his family unbelievably, with the entire Trooper chain of command from the Governor on down, they had Department of Law prosecutors do the "investigation". Prosecutors Roger Rom and James Fayette ruled: "to convict Trooper Gibbens of perjury, a jury would have to believe that [Haeg was] truthful when [he] told [Gibbens] where [he] thought the kill sites were located." (It is very interesting that Roger Rom is the one representing the State against Haeg in his appeal and Trooper Gibbens is his main witness against Haeg) After this "investigation" Haeg tried for a long time

to get anyone in authority to confirm his statements that were recorded by Trooper Gibbens and finally asked Lieutenant Steve Bear of the Soldotna detachment of the Alaska State Troopers to determine in which GMU all the GPS coordinates were located that Trooper Gibbens himself recorded. Lieutenant Bear subsequently received a memo from Trooper Gibbens himself that ALL the sites he investigated were in game management unit 19D. Haeg would like to commend Lieutenant Bear for his help when no one else was willing.

If State prosecutors, to convict Trooper Gibbens of perjury, need to convince a jury that Haeg believed he was truthful when he told Trooper Gibbens the sites were in Unit 19D don't you think that a memo from Trooper Gibbens himself, confirming this, and directly contradicting his sworn search warrant affidavits and his sworn testimony before Haeg's judge and jury, which led to a illegal conviction along with a draconian sentence, would suffice? Would anyone agree that the reason for Rom and Fayette's refusal to prosecute Trooper Gibbens for Class B felony perjury against Haeg is this would not only make the Troopers and State prosecution look bad but that also Haeg's conviction would have to be reversed? Several people who witnessed these crimes even called Rom and Fayette to give their accounts and they were never called back during this entire "investigation" of Trooper Gibbens actions by Rom or Fayette.

> *Lewis v. State*, 9 P.3d 1028. (Ak., 2000). "Once defendant has shown that specific statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that

statements were not intentionally or recklessly made."

Gustafson v. State, 854 P.2d 751, (Ak.,1993). "Prosecutors and police officers applying for a warrant owe a duty of candor to the court; they may neither attempt to mislead the magistrate nor recklessly misrepresent facts material to the magistrate's decision to issue the warrant."

Cruse v. State, 584 P.2d 1141, (Ak.,1978). "Constitutional protection against warrantless invasions of privacy is endangered by concealment of relevant facts from district court issuing search warrant, as search warrants issue ex parte, & issuing court must rely upon trustworthiness of affidavit before it."

State v. Davenport, 510 P.2d 78, (Ak.,1973). "State & federal constitutional requirement that warrants issue only upon a showing of probable cause contains the implied mandate that the factual representations in the affidavit be truthful."

State v. Faust, 265 Neb. 845, 660 N.W.2d 844 (2003). "An error in admitting or excluding evidence in a criminal trial, whether of a constitutional magnitude or otherwise, is prejudicial unless it can be said that the error was harmless beyond a reasonable doubt."[8]

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[8] See *McLaughlin v. State*, 818 P.2d 683, (Ak.,1991). *Stavenjord v. State*, 2003 WL1589519, (Ak.,2003). *U.S. v. Hunt*, 496 F.2d 888,

U.S. Supreme Court in *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). "Only 'wip[ing] the slate clean ...would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place.' The Due Process Clause demands no less in this case."

U.S. Supreme Court in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969). "[D]ue process is afforded only by the kinds of 'notice' and 'hearing' which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged [defendant] before he can be deprived of his property or its unrestricted use. I think this is the thrust of the past cases in this Court [U.S. Supreme Court]."

U.S. Supreme Court in *Wiren v Eide*, 542 F2d 757 (9th Cir. 1976)."Where the property was forfeited without constitutionally adequate notice to the claimant, the courts must provide relief, either by vacating the default judgment, or by allowing a collateral suit."

C.A.5.Tex.,1974. U.S. v. Markey, 131 F.Supp.2d 316, D.Conn.,2001, State v. Malkin, 722 P.2d 943 (Ak. 1986), People v. Reagan, 235 N.W.2d 581, 587 (Mich. S.Ct. 1975), U.S. v. Thomas, 489 F.2d 664 (1973), and the Seminal U.S. Supreme Court case, Mapp v. Ohio, 367 U.S. 643 (1961) [held that all evidence obtained by searches & seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a State court].

> Alaska Supreme Court in *Etheredge v. Bradley,* 502 P.2d 146 Alaska 1972. "Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing ... this prejudgment garnishment procedure violates the fundamental principles of due process."

Haeg's property, used to put food in the mouths of his wife (Jackie) and two daughters (Kayla, age eight (8) and Cassie, age five (5)), was seized, held, and forfeited without any regard whatsoever for the constitutional safties protecting the right of every U.S. and Alaskan citizen to provide a livelihood for their family. Again Haeg would like to ask where is the "ensemble of procedural rules" that "bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors" that the Alaska Supreme Court has ruled protects citizens against unnecessary or illegal seizures and/or forfeitures.[9]

Haeg would like to point out that *Criminal Rule 37(c)* provides the right, in the court in the judicial district which the property was seized or which the property may be used, to contest the seizure of property, anytime after the seizure, no matter why it was seized, and that it is a right independent of any criminal proceeding. The district courts and state prosecutor Rom, from what little they have given Haeg, seem to think this right was waived or not needed to be complied with something to do with Haeg's criminal case. This is obviously wrong. The whole point of this "ensemble of procedural rules" is to protect the use of your property, especially when it is seized under the "ruse" that it is "only" evidence and especially when it is seized via ex parte affidavits of a single individual Trooper who may

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[9] See *Waiste v. State*, 10 P.3d 1141 (Alaska 2000).

be overzealous in his request that will put deprive someone of property used to provide a livelihood. He may be so overzealous he is even willing to commit perjury. Haeg would like to point out property owned by his wife was also seized and forfeited without anyone asking her if she had an objection or providing an opportunity to object. Haeg would like to point out the state seized and deprived him of his property for eight (8) months before ever charging him. The state prosecution no doubt relished the fact that Haeg was being financially devastated during this entire time. It would put them in a far superior position if Haeg was already bankrupt *before* even being charged. Even if they *never* filed charges they could count it as a sweet victory.

Maybe with this new-found law enforcement tactic the Troopers will be able to bypass trials entirely – if they think someone is doing something wrong (or maybe someone they just don't like) they can just seize all of the persons property that they use to make a livelihood, bankrupt them, destroy their dreams, and they will just go out and commit suicide.

Since state and the court lost jurisdiction to seize, hold or forfeit David and/or Jackie Haeg's property or to use it as evidence, for the following reasons: the state did not obtain a writ for the seizure and subsequent forfeiture; the state did not give timely notice it intended to forfeit David and/or Jackie Haeg's property; the state didn't provide David and/or Jackie Haeg with a hearing within 7 days of seizing their property; the state did not get anything waiving this hearing, in writing or otherwise; David and/or Jack ie Haeg did not consent in writing to an additional extension of time to the ex parte seizure and deprivation; because there was no notice of readiness for trial or judgment entered within six (6) months of seizure and because there was no motion filed before the expiration of

six (6) months extending this time period; David and Jackie Haeg respectfully request this court to grant this emergency motion and order the State of Alaska to release their property and suppress evidence. Haeg respectfully asks for an order in his hand before November 16, 2006 or delivered to the Evidence Custodian of the Alaska State Troopers at 5700 E. Tudor Road, Anchorage, AK 99507-1225, phone (907) 269-5761, returning his and his wife's property and suppress evidence.

This emergency motion is supported by the accompanying memorandum, documents and affidavits from David and Jackie Haeg.

RESPECTFULLY SUBMITTED this 6th day of November 2006.

"s/"

David S. Haeg, Pro Se Appellant

APPENDIX JJ

Robinson & Associates Lawyers
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August 25, 2005

The Honorable Margaret L. Murphy Via Fax and Mail
District Court Judge
3670 Lake St., Suite 400
Homer, Alaska 99603
RE: State v. Dave Haeg
4MC-04-024 Cr.

Dear Judge Murphy:

Enclosed you will find a Petition for Issuance of Certificate for Out-of-State Subpoena, Affidavit of Counsel, proposed Order, and Certificate Requesting Out of State Subpoena requesting the telephonic appearance of Doug Jayo at Mr. Haeg's sentencing hearing on September 1st.

I am waiting for a call back from the clerk in the Idaho court to tell me if they will allow faxed copies of the documents. Usually the court requires two certified copies of the entire packet (petition, affidavit, order, and certificate). So, I am sending down to you the original documents (by overnight mail) for certification and I would ask that you return two certified copies of the documents to us to forward to the Idaho court. We have made arrangements for a process server in Idaho to serve Mr. Jayo with the summons the Idaho court will issue for his appearance at a hearing. In the event that the clerk calls

me back and indicates that they will indeed accept faxed copies, I will notify you right away.

I am also faxing to you a letter we received from another of Mr. Haeg's witnesses, Brent Cole, indicating that he will not be available to testify on September 1st.

Sincerely,

"s/"

Bonnie Burger
Paralegal

/bb
cc: DA

APPENDIX KK

January 8, 2008 - In the Court of Appeals of the State of Alaska, Order, Haeg v. State, No. A-9455/A-10015. Opposition.

1/8/08 OPPOSITION TO STATE'S 12/27/07 MOTION TO ORDER APPELLANT TO DESIGNATE PRECISE PORTIONS OF THE ELECTRONIC RECORD & TO STAY THE DATE FOR FILING THE APPELLEE'S BRIEF

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case and hereby files an opposition to the State's motion to order Appellant to designate precise portions of the electronic record and to stay the date for filing the Appellee's brief.

Respected judges of both the Alaska Supreme Court and the Alaska Court of Appeals – David Haeg writes all of you today in hope of ending an ongoing fundamental breakdown in justice never before recorded in Alaska. David Haeg will make every effort to be brief, to the point, and apologizes for his directness.

David Haeg filed a pro se appeal opening brief in his criminal appeal on January 22, 2007 – claiming judicial system corruption involving Troopers, prosecutors, and David Haeg's own defense attorneys and was ordered to submit a shortened brief on or before February 20, 2007 – which he did.

According to the rules the State was to file their brief 20 days after this.

Through a series of motions by the State and actions by this Court of Appeals it is now nearly a year after David Haeg filed his brief – with the State just recently asking for a second non-routine 49 day extension of time in which to file their brief (300+ days after they were first required to file it) and is now asking their briefing schedule be again stayed so David Haeg can be required to identify the portions of the record that support his claims of error – *which he was already required to do and has so done*. See the numerous motions, orders, and compliances from nearly a year ago to present.

It is clear that the violation of David Haeg's constitutional rights are so gross, intentional, malicious, and apparent that the State can see no other way to keep David Haeg convicted than to just delay until David Haeg gives up.

David Haeg regrets to tell the State, this Court of Appeals, and the Alaska Supreme Court this will never happen. David Haeg will continue to carefully document Alaska's corrupt judicial system and those that seek to keep it covered up. Waiting for nearly a year for an appellee brief from the State prosecution is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

This Court of Appeals ordering the transcribing of only the State's designation of record and not David Haeg's designation is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

The State bearing false witness against a U.S. Citizen to change the location of evidence found, used on every search warrant affidavit used to seize his business property and presented to his judge and jury – specifically cited by the same judge as reason to end that citizens

ability to provide for his family and to put him in jail– is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

The use of illegally obtained evidence as nearly the only evidence used against a U.S. Citizen is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

Not providing a prompt opportunity for a U.S. Citizen to contest the deprivation of property, used as the primary means of providing a livelihood, is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

Denying a U.S. Citizen the right to confront adverse witnesses, present evidence, present oral argument, and present witness testimony in trying to get his property back is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

The State promising immunity to get a U.S. Citizen to give up his right against self incrimination and then breaking that immunity to use the citizens statement and its fruits as nearly all the evidence against that citizen at trial is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

David Haeg can see the States dilemma – very nearly their entire case rests on gross, blatant, and intentional violations of David Haeg's constitutional rights. Where would you start to defend such a case?

Look at it in broad strokes:

(1) All evidence seized and deprived with the search warrants was in violation of due process and against unreasonable searches and seizures - and thus could never

have been used against David Haeg – yet it all was used and it was very nearly all the evidence the State had.

(2) David Haeg had immunity for his statement – so nothing connected to it could have been used against David Haeg – yet very nearly everything the State used against David Haeg was directly connected to David Haeg's statement.

Imagine David Haeg's surprise when he read that nothing must be used no matter how thin the thread of connection – and that the prosecution, once they obtain a statement by promising immunity, then has to *affirmatively* prove the case then presented is absent any taint, no matter how small – to the extent the officers interviewing the immunized witness should have no connection whatsoever to those prosecuting that witness at trial. It is even recommended that the prosecuting officers conduct themselves so they can testify they never spoke with the immunized witness, never seen transcripts of the witnesses testimony, and never read reports in which testimony was mentioned. See *Kastigar v. United States*, 406 U.S. 441 (1972) & *Counselman v. Hitchcock*, 142 U.S. 547 (1892).

See also *Daly* v. *Superior Court* (1977) 19 Cal.3d 132, 145:

> "[T]he very existence of such testimony may present serious problems of *proving* its complete independence from evidence introduced in the criminal proceeding"

Yet in David Haeg's case both the prosecutor and trooper conducting David Haeg's interview were the very same prosecuting the trial against David Haeg. And the State's star witness against David Haeg, Tony Zellers, has

testified under oath (along with Zellers attorney Kevin Fitzgerald) that Tony Zellers would have never cooperated with the State but for David Haeg's statement. How then could the State *require* Tony Zellers testify against David Haeg? How could *every* information filed against David Haeg say, "David Haeg came in and said blah - blah – blah and thus we are charging him with blah - blah – blah"?

The entire case presented to convict David Haeg is an abomination.

This doesn't even take into consideration everything (whole year of income from both David and Jackie Haeg among other things) the State stripped away from David Haeg that had been given for a plea agreement the State broke so they could force David to trial – in direct violation of David Haeg's constitutional rights of getting what he bargained and already paid for.

How could the State then claim at David's sentencing they didn't know why David and Jackie gave up this year – just so they made sure David never even got credit for this year when they asked he be sentenced to another 5 years without a guide license? What is going on? Where is justice? Has it forsaken Alaska's courts?

Maybe even more shocking than anything above is that if the errors in David Haeg's case are so gross, obvious, and prejudicial why didn't any of David's 3 attorneys, paid nearly $100,000, use this in David Haeg's defense? There is only one explanation – they were also involved in the conspiracy to deprive David Haeg of his constitutional rights that would guarantee fair proceedings.

This then brings into focus this Court of Appeals purpose in ignoring David Haeg's main claim in his opening

brief – that there was corruption and conspiracy between David Haeg's own attorneys, the State prosecution, the Troopers, and even David's trial court. Why would this Court of Appeals tell David Haeg and the State to only address David Haeg's claims of prosecutorial misconduct and errors by the trial court – leaving the involvement of David Haeg's attorneys unaddressed? Sounds like a continuation of the cover up of the bigger conspiracy. Something of a red herring to make the bigger issue of David Haeg's attorneys selling him out to the prosecution vanish into obscurity.

Why won't David Haeg's trial court accept the constitutionally guaranteed application for post conviction relief claiming ineffective assistance of counsel so David Haeg can prove what his attorneys did to him?

Why won't this Court of Appeals stay David Haeg's appeal so he could do this? Especially since they have *required* all other appeals be stayed if the defendant wishes to file for post conviction relief claiming ineffective assistance of counsel?

How can this Court of Appeals continue to postpone David Haeg's urgent request for a ruling on the return of his property – when he has been asking for this for *years* because he needs this property to provide a livelihood for his family? Especially when this ruling is to be provided "within days, if not hours"? Especially when the State's claim they didn't have to provide him with a prompt opportunity to contest is in exact opposition to all U.S. Supreme Court and 9th Circuit Court rulings?

Exactly what is going on?

Does anyone think David Haeg will not secure the return of his property along with full compensation, actual and punitive, for an illegal deprivation complete with proof that everyone *knew* they were illegally keeping this property from David Haeg?

Has the State and this Court of Appeals every thought of the toll this fundamental breakdown in justice has had on David Haeg and his family over the past 4 years? Stress that has turned David's hair gray, having to sell off their possessions, cash in their kids college funds, wipe out all savings and retirement, hock their house, lose all their hunting camps (due primarily to the intentional and unjust refusal of this Court of Appeals to correct David Haeg's illegal sentence) and almost certainly going to lose the hunting lodge they put their life's effort into? Is this the plan – keep piling it on until David Haeg breaks? Does this Court of Appeals consider the anger and determination generated when David Haeg and those with him realize breaking nearly every one of David Haeg's constitutional rights did all this? Does this Court of Appeals consider that those standing with David Haeg realize it must stop with David or their property, business, and life will be the next one illegally taken?

David & Jackie Haeg calculated the additional cost attorney's would have charged them had David not started representing himself. It would be an additional 1.2 million dollars.

It is very clear to David & Jackie Haeg, and those now joining in their demand for justice, exactly why this corruption has got so bad – everyone else went bankrupt before they could expose it. David & Jackie will not go bankrupt before they reach justice.

Now that the constitutional violations are so obvious and the cover up has become so clear there is no stopping the Haeg family. The Haeg's incredible investment will not be wasted. Everyone who continues the conspiracy of denying and delaying David Haeg his constitutional rights and justice only continues to sacrifice his or her career, life, and likely steps further into a federal penitentiary.

David Haeg admires the obedience of the State's attorneys to do this for their bosses. Not only will David Haeg's conviction be reversed but David Haeg and those with him will continue to demand the current Department of Justice investigation be completed, indictments issued, U.S. Congressional and Alaska Legislative investigations started, and civil lawsuits (in addition to David's) pursued.

David Haeg looks forward to this Court of Appeals ruling on the State's request to again stay the filing of the State's brief so David Haeg can be forced to once again do the same thing this Court of Appeals has already required him to do.

David Haeg is including a brochure that captures a little of the wonderful life that has been destroyed by this corruption. It also captures something of the people who are standing with David, Jackie, Kayla, & Cassie Haeg to see justice done.

If you look at this brochure carefully it is likely you will get some insight at the strength, determination, and quality that is going to see this perversion of justice brought down.

This opposition is supported by the accompanying affidavit. RESPECTFULLY SUBMITTED this 8 day of January 2008.

"s/"

David S. Haeg, Pro Se Appellant

APPENDIX LL

September 19, 2008 - In the Court of Appeals of the State of Alaska, Order, Haeg v. State, No. A-9455/A-10015. Petition for Rehearing.

9/19/08 PETITION FOR REHEARING

COMES NOW DAVID HAEG, in the above case & in accordance with Rule 506 hereby asks the Court of Appeals for a rehearing.

1. The Court overlooked the directly controlling Alaska Supreme Court case *Waiste v. State* 10 P.3d 1141 (Ak 2000) in denying Haeg's due process claim he was entitled to the return of property & then to suppress it as evidence.

The Court claims Haeg, "relies *primarily* on the decisions in F/V American Eagle v. State and State v. F/V Baranof" – with not a single mention of Waiste when Haeg first, primarily, & repeatedly cited Waiste. [At. Br. 4; Motion for Return of Property 8-9].

How could due process have been given when the State seized property Haeg *was using at the very time as his primary means to provide a livelihood,* without a prompt postseizure hearing ("within days if not hours") or even notice such a hearing was available? What about Haeg asking when he could get his property back & the very Trooper seizing the property telling Haeg *"never"*? To Haeg this meant there was *no* prompt opportunity to contest – he was out of business with no judge to hear his side.

Multiplying the harm was the fact every affidavit used to seize his property falsified the location of the

evidence against Haeg & this false location was specifically used to charge & convict Haeg of crimes harsher then what may have been otherwise warranted. Because a judge never addressed the false evidence location at a prompt postseizure hearing it never was addressed - & thus adversely affected Haeg's entire case. *The reason for a mandatory hearing after taking someone's livelihood unopposed is clear – it may not be warranted.*

Haeg respectfully asks this Court apply the controlling caselaw in Waiste to the facts of Haeg's case & return Haeg's property.

2. The Court overlooked the material question that since Haeg was not given the due process of intent to forfeit, items to be forfeited, and/or the statutes authorizing forfeiture in any charging information he is entitled to the return of property. [Motion For Return of Prop 4-6, 32-35, & 52-60; Pet. For Rev. 2-3]

Haeg claimed due process required the State to place the intent to forfeit, items to be forfeited, & the statutes authorizing forfeiture in the charging informations. *See* Rules 7 & 32.2 of the Federal Rules of Criminal Procedure.

Since States must grant as much due process as the Federal Government, Haeg asks the Court apply the Federal standard to his case & return his property.

3. The Court overlooked the question the State's entire argument to Haeg's judge & jury was the evidence showed Haeg killed wolves *were he guided* to benefit his business when they knew this was false when presenting the arguments & testimony. Also, the Court overlooked the directly

controlling cases *Mooney v. Holohan*, 295 U.S. 732 & *Napue v. People*, 360 U.S. 264 [At. Br. 5-6, 13-16].

The State argued Haeg should be convicted because he took wolves where he guides to benefit his business. Gibbens then testified the evidence showed Haeg took the wolves where he guides – as he had put on all search & seizure affidavits. Yet Gibbens, when trapped on cross-examination, admitted this was false testimony & argument – proving he knew it was false when he testified – making it irrefutable perjury. Money & Napue hold it is a denial of due process to convict a person on false testimony known to the State. The false testimony in Haeg's case wasn't just known to the State, it was the State itself who knowingly gave the false testimony. Haeg respectfully asks this Court apply the controlling caselaw in Mooney & Napue to the facts of Haeg's case.

4. The Court overlooked the material question Haeg wished to stay his appeal to conduct a post-conviction relief procedure claiming ineffective assistance of counsel to prove his attorneys maliciously deprived him of constitutional rights & conspired to do so. [At. Br. 1-20]

For nearly 2 years Haeg has filed many motions with this Court to stay his appeal so he could conduct PCR, a critically important issue for Haeg. This Court held in *State v. Jones* 759 P.2d 558 that this was the proper procedure for someone on appeal wishing to claim IAOC - American Bar Association Standard 22-2.2 agrees. Yet this Court refused to stay Haeg's appeal, with *no justification* other then the law allows both to be conducted at the same time. Haeg filed many motions for reconsideration -- asking for a justification to deny him, a non-attorney who cannot possibly conduct both at the same time, the same procedure

given to everyone else. This Court remained unmoved & now, with its decision in Haeg's appeal *after nearly 3 years*, the harm to Haeg is clear.

The decision claims "Haeg" waived innumerable fundamental constitutional rights that guarantee a fair prosecution. 1. The right against unreasonable searches & seizures; 2. The right to due process; 3. The right to equal protection of law; 4. The right against self-incrimination; 5. The right against double jeopardy; 6. The right to compulsory process for witnesses in his favor; 7. The right to have assistance of counsel; & 8. The right to have no State deprive any person the equal protection of the law or of due process.

Yet "Haeg" never waived a single right – his attorneys did over his taped demands something be done. Since, with this decision, this Court has kept him on an appeal treadmill for 2 years for nothing, Haeg's wants a *legitimate reason*, other then " the law allows it", that this court will not let him stay his appeal so he can prove his attorneys maliciously waived Haeg's rights over Haeg's demands. If there is no legitimate reason this is another violation of Haeg's right to the equal protection of the laws.

5. A smoking gun?

The day before his PA was to be finalized Haeg sent the court & the State a letter documenting what he was going to testify to under oath the next day - that a sitting Board of Game member told him if more wolves were not taken the WCP would most likely be shut down as ineffective; that Haeg had to kill more wolves so this did not happen; & that if Haeg took wolves outside the area to just mark them on GPS as being taken on the inside of the area. Just hours after they received this letter the State

filed an amended information violating the PA by greatly increasing the severity of the charges. As a result the PA never happened & Haeg never testified under oath in open court what the Board of Game member told him.

Animal rights activists were (and still are) trying to shut the WCP down by claiming the State & Board of Game were not using sound science & were manipulating facts to justify the program. Haeg's testimony in open court during his PA would have been the smoking gun proving this as fact.

Also interesting? Haeg's written statement vanished from the official court record of his case – *but the cover letter documenting its submission remained in the file.*

This motion is supported by the accompanying affidavit.

RESPECTFULLY SUBMITTED this 18th day of September 2008.

"s/"

_____

David S. Haeg, Pro Se Appellant

APPENDIX MM

ADN.COM
Anchorage Daily News

"It's a complicated, ugly case against guide David Haeg"

CRAIG MEDRED
OUTDOORS
(05/17/08 22:14:50)

When pilot and big-game guide David Haeg strayed outside the boundaries of a wolf control area near McGrath in 2004 to slaughter some wolves, there is little doubt he thought he was doing the right thing. Everyone involved with the wolf-killing program for which the state had permitted Haeg understood the objective was killing wolves to increase the survival chances for moose.

And even if Haeg and gunner Tony Zellers were technically outside the control area, they were still operating within the boundaries of state Game Management Unit 19D, and the state calls these things "Game Management Units" for a reason.

What were Haeg and Zellers doing anyway but helping to manage the game in Unit 19D?

Unfortunately the state didn't see it that way. Under fire from animal activists upset about the aerial gunning of wolves, the state saw in Haeg a chance to demonstrate that you can't just let wolf-control run wild, to spin an old phrase from former Gov. Wally Hickel.

Still, in fairness to the Alaska state troopers and the state attorneys involved, it is near certain they too thought they were doing the right thing when they busted Haeg.

Everyone agreed Haeg broke the law. He shot nine wolves 20 to 30 miles outside the control area. He deserved to be punished for that.

Where the issue turned ugly was in deciding what punishment fit the crime. This is the reason the case is still making its way through the Alaska court system.

The state wanted make an example of David Haeg. It was supposed to be pretty simple:

They'd bust him. They'd make a big show of it by playing the press like a trophy king salmon, something at which law enforcement officials in this state are good.

Wolves shot 20 to 30 miles outside the control area became wolves shot up to 80 miles outside the control area. Haeg was portrayed as a rogue, out-of-control aerial wolf hunter to make it appear the state was keeping a close watch on these hunts, which is the biggest fraud in all this.

Haeg was supposed to take the publicity hit, hire a fixer to negotiate a plea deal and then just wait for everything to fade away.

That's the way these cases usually go down.

Haeg, for his part, played his role properly at the start. He hired a lawyer who specializes in plea-bargaining wildlife cases. A plea bargain was struck.

And then everything fell apart. Why isn't exactly clear.

State assistant attorney general Andrew Peterson said it was because Haeg didn't want to let the state take his airplane, a pricey Piper Super Cub specially outfitted for short-field landings.

"He didn't want to give it up," Peterson said.

But it isn't quite that simple.

The state had seized Haeg's airplane early in the investigation. State officials never bothered to tell him he had the right to protest that seizure and go before a judge to try to get the plane back while his case was adjudicated. When he finally found out, he got mad.

By then, he'd also lost a hunting season with its tens of thousand of dollars in business. He was watching his life drain away along with his money.

"All they had to do," he told the three, gray-haired judges of the appeals court in mid-May, "was write a little note on the search warrant: 'Mr. Haeg, you have the right to appeal it.' "

Instead, Haeg said, when he asked troopers how and when he might get his plane back, "the trooper told me I was never going to get my plane back."

Somewhere in there, the now 42-year-old Haeg decided the government -- our government -- was trying to railroad him, and he started fighting back. He hired two attorneys. When one seemed more interested in negotiating deals than battling for his case and the other couldn't do

much to stop him from getting convicted, he got even madder.

He became his own lawyer, a one-man legal aid society cranking out the briefs and appeals. Four years after the wolf shooting, he is a man obsessed with his case.

But then, we all might be if you consider what happened to Haeg after the plea agreement went bust.

The state used what Haeg said in a five-hour, plea-agreement interview to put together a bunch of new charges. They didn't just go after him for violating the terms of the aerial wolf-control permit. They went after him for the crime of aerial hunting.

(Haeg makes an interesting argument that someone engaged in state-permitted wolf control isn't "hunting" because the state, in permitting the aerial gunning, specifically says it isn't hunting.)

The prosecutors saw it differently. To them, it looked like hunting, and they tried to tie it to the game management unit in which Haeg guides to make it appear he was doing wolf control to further his hunting business.

A trooper testified that Haeg killed the wolves in the game management unit where he has his hunting camps, but eventually recanted that testimony on cross-examination at Haeg's trail.

As Haeg pointed out to the appeals court, however, not even the judge appeared to hear. In taking away Haeg's guide license, and thus his business, for five years, the judge specifically cited the egregious act of Haeg illegally

killing wolves in the area where he guides -- something which just didn't happen.

Haeg gets especially upset about this. He tosses the word "perjury" around a lot.

I don't know what to think about David Haeg. He and some of his friends have e-mailed me repeatedly over the years to plead his case. He's always sounded a bit paranoid.

He started a Web site to publicly air the case: alaskastateofcorruption.com. It appears a little paranoid too -- rambling and disjointed. Haeg is not a particularly eloquent man.

He is a big-game guide. He looked different in suit and tie before the appeals court judges in a sterile Anchorage courtroom, but he was clearly still a guy who would have been a lot more comfortable in the woods.

After his presentation, all by himself, without the aid of any of the attorneys he's come to detest, a lone man behind a wooden table bucking the system in what he believes to be a fight for what is right, Haeg broke down in tears.

I knew then even less than when I entered the court room. Some 50 or so people in attendance, though, had a distinct and communal opinion. After the judges walked out of the chambers, they stood up to applaud Haeg long and loud.

Poor state attorney Peterson had to sort of slink out of the chambers.

A colleague at the top of the stairway leading to the door, shook his hand -- a deserved thank you for arguing what has come to be a complicated and ugly case.

I was left knowing that I didn't like a lot of what I saw. I felt a little sorry for Haeg. I remember thinking mainly about the over-used phrase of an old friend: Just because you're paranoid doesn't mean they aren't out to get you.

What Haeg was apparently trying to do in March of 2004 was help the state out with its dirty little business of manipulating wolf numbers. He got a little carried away, yes, but for that he deserves to lose his business for five years and his airplane?

If that's the case, what should be the punishment for those commercial fishermen who on any given day over the course of the Alaska summer stray outside the boundaries of carefully drawn fishing districts to snatch public resources worth tens of thousands of dollars?

Haeg wasn't making any money off shooting those wolves.

He was just a poor fool trying to help the state with its stated goal of reducing wolf numbers in the McGrath area. So far, it appears to have cost him about four years of his life.

Outdoors editor Craig Medred is an opinion columnist. Find him online at adn.com/contact/cmedred or call 257-4588.

APPENDIX NN

AFFIDAVITS

January 29, 2009

Justice Anthony M. Kennedy
Supreme Court of the United States
One First Street N.E.
Washington, DC 20543

Dear Justice Kennedy,

I retired after over 20 years in the Alaska State Troopers, where I supervised Troopers in a large portion of the State.

I am now a private investigator and process server.

I have first hand knowledge of evidence of the same constitutional violations which Mr. Haeg has brought to your attention. I know of 14 people, other then Mr. Haeg, that these violations caused life-changing effects.

I personally presented evidence of these violations to appropriate authorities up to and included Governor Sarah Palin's office. It is now months later and my concerns have still not been addressed.

I believe these constitutional violations will continue until they are addressed. I believe it is very important you address Mr. Haeg's appeal as the issues raised affect numerous individuals in this State.

I swear under penalty of perjury the foregoing is true to the best of my knowledge.

"s/"
Fred Angleton, POB 4155, Soldotna, Ak 99669
907-262-2266

To the United States Supreme Court,

I came to Alaska while in the United States Coast Guard and have since been an Alaska State Trooper & Commercial Pilot.

I am writing in regard to my friend David Haeg. I can attest to the fact he is quite sane, which is amazing considering what the failure of our justice system has put him and his family through. I have witnessed a terrible injustice take place over and over in his prosecution, falsification of search warrants, perjury during trial, failure to honor plea agreements, & inappropriate actions by his attorneys, Attorney Generals Office, & Alaska Bar Association.

His rights are being violated by extreme measures to suppress the inevitable exposure of these crimes.

David is very intelligent & recognizes these wrongs & cannot believe this is happening in a State he loves by a Judicial System he has had tremendous faith in.

I have participated in both David's court & Bar cases & have personally witnessed these wrongs.

I ask you to hear David's case as the Constitutional violations taking place affect all of us.

I attest this statement to be true to the best of my knowledge under penalty of perjury.

"s/"
Wendell L. Jones
POB 942
Cordova, Ak 99574

907-424-7607

Justices of the United States Supreme Court I pledged an oath to protect and defend the United States Constitution and then did so by serving 14 years in the U.S. Airforce as an F-15 Captain. Afterward I was Mr. Haeg's codefendant in this case & was a witness in numerous proceedings concerning him and my own attorney Kevin Fitzgerald.

I personally witnessed and was victim of many of the same constitutional violations Mr. Haeg seeks to have you address, lies by our attorneys, perjury by Trooper Gibbens, unlawful use of plea statements, & others.

The other frustrating part is the reluctance/refusal of the Alaska Court system to address these violations.

This seems to be standard operating procedure here in Alaska, a small close-knit legal system covering its member's tracks. This is wrong; all anybody asks for is a fair trial. It is important that you address this situation not just for Mr. Haeg but also for all of us.

I hope I did not spend 14 years of my life defending a constitution this State does not have to obey.

I hereby swear under penalty of perjury the foregoing is true to the best of my knowledge & ability.

"s/"

Tony R. Zellers
9420 Swan Circle
Eagle River, AK 99577
907-696-2319

January 29, 2009

Supreme Court of the United States
One First Street N.E.
Washington, DC 20543

Justices of the Supreme Court,

I am a resident of the state of Alaska where I practice my trade as a hunting and fishing guide.

I have been acquainted with the details of Mr. Haeg's case from the start and have been present at many of the court and bar hearings relating to his case.

I have been present and witnessed blatant lies and perjuries from Mr. Haeg's past attorneys and Alaska State Trooper Gibbens.

I fear for the rights of myself, Mr. Haeg, and every other resident of the State of Alaska.

It seems that we live in a state where constitutional law is no longer practiced by the "justice system".

I ask that you hear the appeal of Mr. Haeg regarding the gross injustices that have been done against him at the hands of our state legal system.

I hereby swear under penalty of perjury the foregoing is true to the best of my knowledge and ability.

"s/"
Drew Hilterbrand
PO Box 1038
Soldotna, AK 99669

907-252-4090

2/2/09

JUSTICES OF THE UNITED STATES SUPREME COURT

I, Thomas J. Stepnosky, a Vietnam veteran, who fought for our way of life and the rights of our citizens, have come to witness, by the judicial system of the State of Alaska, a complete breakdown of these rights and protections afforded to all of us under our Constitution.

In the case of David Haeg, I have seen through tainted testimony, him convicted, not only by this, but by a complete lack of due process and a violation of his constitutional rights. I am astounded and ashamed that this could happen to one of our citizens in this day and age. The Alaska "Good old Boy" Judicial System is beyond broken!

Therefore, I implore you to review, and right the wrongs done in this case.

Sincerely,

"s/"
Thomas J. Stepnosky
PO Box 205
Thompson, PA 18465
570-727-3130

February 1, 2009

To the Justices of the United States Supreme Court,

My name is Michael Adlam. I am a business owner and have been a resident of the state of Alaska for over 20 years. My message to you is this: I respectively and urgently request that you consider Mr. Haeg's petition for Writ of Certiorari.

Countless members of the voting public in our state and around the country have followed this case closely, and are appalled at the lack of justice exhibited here. When deceit and perjury in our law enforcement and judicial system go unchecked and unpunished, it crushes the trust that one should have for the protection of an individual's constitutional rights. This simply affects us all.

I know this family personally and have watched in disbelief as Dave has fought for his family's well being and constitutional rights. Having watch this situation unfold, I can assure you that Mr. Haeg is not an individual that will lie down and give up as others have in the past; he will not allow the players of injustice to have their way. The citizens of this state our coming together on this, and keeping each other informed with a watchful eye on what happens in this case.

In closing, I would strongly encourage you to help Mr. Haeg and his family. His spirit and tenacity are an excellent example of how our state was settled, and I know that he will find justice with your help. I thank you for your time and attention in this matter.
Sincerely,
"s/"
Michael Adlam,

39310 Hallelujah Dr., Soldotna, AK 99669, (907)262-0669

January 28, 2009

Justice Anthony M. Kennedy
Supreme Court of the United States
One First Street N.E.
Washington, DC 20543

Dear Justice Kennedy,

I, James Isaak have followed the events of David Haeg and I am appalled the way our justice system can strip an American citizen of his constitutional rights just to protect the "Good old Boys Club".

This has to stop, and I am pleading to you to look at his case and all the corruption, lies and deceit that was told against him.

I used to have faith in our justice system. After what I have seen our Justice system put David Haeg and his family through I have very little respect for it.

My father served in the marine core in the South Pacific in World War 2. He was appalled at what our justice system has done to David Haeg. My father died at 85 in 2007.

I would like to close with the Pledge of Allegiance. I pledge allegiance to the flag to the United States of America and to the republic for which it stands, one nation under God indivisible, with liberty and JUSTICE for all.

I pray that you will hear his case and stop the corruption in our great state of Alaska. Thank you,

"s/"

James Isaak, Box 1341, Soldotna Alaska, 99669, 907-262-1960.

January 17, 2009

Supreme Court of the United States
One First Street N.E.
Washington, DC 20543

To the U.S. Supreme Court,

My name is Mark Bressler and I ask you to consider taking the case of David Haeg for the injustices done against him, his family and many Alaskans who suffer under a corrupt police and court system in Alaska. It is a good ol boys network that needs your help in reining in their terror against U.S. citizens living in Alaska.

It is time for justice to come to "The Last Frontier".

Thank You.

"s"

Mark Bressler
2750 VIP Dr
Kenai, Ak 99611
907-335-6373

29 January 2009

To the honorable Justices of the United States Supreme Court:

My name is William J. Twohy. I am a practicing Nurse Anesthetist residing in Soldotna, Alaska. I ask on behalf of Dave Haeg that you hear his case against the State of Alaska. I have been following this case very closely since it emerged, and I have witnessed myriad injustices, Constitutional irregularities, and blatant incompetence by the State's Judicial Branch and Mr. Haeg's hired Counsel. These accusations are supported by the pages of transcripts that Mr. Haeg can submit in his defense. I shudder at the prospects of anybody ever receiving a fair trial in this State after what I have seen.

Alaska has been exposed for its corruption up to and including the highest levels of Government. I am discouraged as I believe the United States Constitution affords individual, unalienable rights which are now being undermined by paid, Alaska State officials who make up their own rules or bend existing rules as they see fit.

I am hopeful a hardworking, intelligent, devoted family man such as Mr. Haeg can finally get effective and lawful vindication from the United States Supreme Court for the injustices he has received from the State of Alaska. Thank you.

I swear under penalty of perjury that the aforementioned is true to the best of my knowledge. Sincerely,

"s/"

William J. Twohy, P.O. Box 871, Sterling, Alaska 99672

907-262-5447.

APPENDIX OO

BROCHURE

Dave Haeg's Alaskan Hunts

Coastal Brown Bear

9'10" Brown "I have to tell you I still can't wipe the smile off my face. I am so proud of that bear I tell everyone about it. I also tell them you are the only outfitter to use in Alaska. I still can't believe how hard you guys work for your hunters with all the flying & moving but I guess that's what makes it work. I will call you soon to talk about the best time to come up for moose." Steve Boniface, NY 845-583-7226 sboniface@pbeinc.com

9' Brown shot at 10 yards with his bow. "Scuba" Jim Brawdy, NY 716-438-0589 Jpbrawdy@pcom.net

9'8" Brown Bear "Dave's business is an enrichment for Alaska." Taken on day 1 after spooking off the "big one" an hour before. Dr. Reinhard Klaessen, Germany Klaessen-Uedem@t-online.de

"I feel I'm qualified to recognize character when I see it & Dave Haeg fits the ticket." Jim Novak. PA jnovak@arrowunited.com 570-274-7723(h) & 570-746-1888(w)

10'4' Boone & Crockett Brown - Dr. Ron Neider, WI 262-637-7276

9' Brown & 6'11" Black "After my caribou & black bear hunt with Dave I immediately booked my second hunt because I knew I had found the man I wanted to hunt

Alaskan Brown Bear with. As President of the Western & Central NY Safari Club Chapters I get many offers – some cheaper & many with more promises but after seeing Dave's setup & working with the man & crew I would go with no other." Mike Shevlin, NY 716-652-3534(h)

10' Brown "I consider Dave a very conscientious individual with high ethical standards – always concerned about Alaska's wildlife resources, safety, & care of his clients & most of all the enjoyment of nature & the hunting experience." Sandro Crivelli, Switzerland 310-519-3969 huntsmen1@ earthlink.net

9'2" Brown Bear "By noon on my first day hunting with you I had seen twice as many bears as in the entire 28 days I had hunted brown bear with other guides in Alaska."

When asked if he wanted to shoot an average bear on day 1 or try for a bigger one Michael replied, "to me this is day 29 of my Alaskan hunt." Dr. Michael Seare, England +441903240770 mike@endospecialist.co.uk

Over 10'Boone & Crockett "Wolverine" Colored Bear - Dr. Anthony Longo, NY 845-888-5875 antjoe@catskill.net

Why hunt with us? Jackie (the real boss) & I asked as many of our past clients as possible to answer this one question. The answer was professionalism, honesty, success on exceptional animals (95% success on brown bears averaging 9'2" & moose averaging 62"), ethics, hard working, experience, knowledge of hunt areas, flying skills, & conscientious. Many more descriptive words & phrases were used but the ones above were repeated time & time again. If you asked me this same question I would answer that I am driven to provide our guests with the absolute best hunt we can. When a guest is unhappy I am unhappy. When I am unhappy things change rapidly. It is as simple

as that. When a weakness is found in our operation we change tactics immediately. This has led to many exclusive use hunting areas bordering National Parks, the best guides in Alaska, highly modified, custom built airplanes, the best equipment money can buy, and the best game management possible.

9'4" Brown Bear "What was reality in Alaska is now a hunter's cherished memory. Dave & Jackie earn a five star rating, providing the best in accommodations, transport & hunting. Thanks for a great experience. To the one who turned out to be my most valued companion on this 2002 Bear Hunt, Tony, my guide, a sincere thank you, for your skill & sharing the art of the hunt. You made this a trip that I am not likely to forget!" Sal Cucorullo, NY 845-496-5151 cucastle@frontiernet.net

Black Bear day one, 9'9" Cinnamon Brown day 2. Benjamin Suarez, Mexico 8717-13-83-24

9'10" Cinnamon Brown - Volker Manke, Germany 41-93901181

9'4" Brown Bear - Dr. John Pavlakis, NY 845-266-3974 drpavy@aol.com

10'6" Brown Bear taken on first day of hunt. "As you know, although this was my first hunt for brown bear with you, it was my 4th attempt in AK. So, although I only spent 1 day with your team it was my 26th day of chasing after brown bears. You told me there were big ones in your territory & you delivered with a magnificent bear. As happy as I am with this bear, I am ever happier with the outstanding operation you run & the even better guide you teamed me up with. Tony went well above & beyond

helping me get this bear." Walt Maximuck, NJ 609-397-0567 wmaximuck@aol,com

9'7" Brown Bear on day 2 "I have hunted and known several Alaskan guides over the past 30 years and would rate David at the top of the list. David, as well as his assistant guides, all exhibited the highest level of honesty and integrity and I would recommend them to anyone interested in top-of-the-line Alaskan hunts." Jack White, CA 925-838-3163 juanblancojw@yahoo.com

"Great state, great hunt, and a great big bear." 10' Cinnamon Brown Danny Phypers, FL 863-465-3280(h) & 863-441-1298(c) dplace@htn.net

"My fall 2001 bear hunt was booked at the end of a very successful 671/2" spread moose hunt with David in [illegible] My 11-day hunt started October 1 and ended 2 hours later after I took a 10'4" bear. By the evening of the second day we had seen 7 other bears, 3 of which I could have shot from our wall tent, and 2 of which were well over 9'. My 2 guides were exceptional, the 4-bunk permanent wall tent was warm and comfortable, and the non-freeze dried food included steak, vegetables, and fresh fruit. In talking to the other 3 guests present I found out the only bear under 10' was a dark 9-1/2 footer. Even more impressive is the fact that 3 out of the 4 of us in camp at that time shot their bears on the first day!" Rusty Brines, CA 530-895-0110 & 530-520-5000

9' Brown Bear - Paul Stuart, NY 845-782-8270

Combination Hunts

"The hunt was one of the most gratifying experiences I have ever had in the field. The accommodations, food, &

attentiveness to my needs exceeded any guided hunt I have been on before or since." Virgil Hannig. IL 618-529-1562 vhannig2003@yahoo.net

64" Moose - Kurt Gabler, Austria 43-1-7995098

The Devenport Family Hunt Jim, Roger, and 13-year old Lloyd, WI 262-306-8866
Roger's Beautiful 65" Moose & Caribou
Jim's Monster Palmed Moose
Lloyd with his nice moose and Black Bear

10'2" Brown Bear & 64"Moose – Jochen Gartz, Germany 00492804-237

Day one 70" Moose, day four 9'9" Brown Bear – Bob Pontius, MI 248-363-5744

9'6" Brown & 63" Moose "I consider Dave the best because he offered his hunting is a serious way combined with his perfect knowledge of the hunting areas & his flying experience. After completing my Brown Bear hunting with him I decided to do the moose hunting with him because the experience was excellent." Eduardo Villalobos, Mexico eavch@jotav.com.mx 52-871-7177474(w) & 52-871-7948954(c)

"You made it possible that Liesel was able to shoot a big moose, a bear, & a caribou. I have hunted in Germany & round the world since I was a child & I can tell you, you are an excellent guide. We both thank you again." Rigobert (Rio) Schwarze, Germany 01149-221-8900818

68" Moose – Pat Arlinghaus, KY 859-689-5708

8'4" Grizzly & 64" Moose "I have hunted in Africa, Russia, Newfoundland, British Columbia, & all over the U.S. That said, Dave Haeg is the most professional, ethical guide/outfitter that I have ever hunted with - bar none!" Royce James, TX 281-370-9333 rwjtcj@msn.com

8' Wolf & 9' Brown Bear "Dave exceeded all expectations." Charlie Squillante, NY 845-778-7092

"I appreciate Dave's perfect knowledge of the hunting laws, the wildlife resource, & the rules of being a hunting guide. The hunting area & the hunt itself were both carefully organized." Manfred Bockenheimer, Germany 011-49-6101-42825 M.Bockenheimer@gmx.de

10' #2 all time SCI Record Book Grizzly & 65' Moose – Jack Van Loon, MI 616-842-1343 Jvlvanloon@aol.com

A Few More Happy Hunters

9'+ Brown Bear, 55' Moose & nice Caribou – Nick Bullock, CA 650-222-4417

First Day Moose "Because of my job I am often hunting in other countries & professional hunters are not uncommon to me. I must access David Haeg one of the most serious persons in this context." Hartmut Syskowski, German Editor, "die Pirsch" (German hunting magazine) hartmut.syskowski@dlv.de (089)12705315

"One major factor for my choosing to trust Dave was his professionalism and kindness. He never tried to "hard sell" a hunting package. He just quietly and professionally explained what I would expect, what the risks and what the limitations were. And everything happened just the way he

said." Dominique Blieck, Belgium 32 475 276767 dblieck@skynet.be

The hunt we donated to 16 year old Tony Kinney through Catch a Dream (the hunting & fishing version of Make A Wish Foundation). The entire hunt was filmed & shown on television by Mossy Oaks Hunting the Country. Tony Kinney & Calvin Shifflet, PA 814-443-9574 debrakinney@aol.com

66" Moose – Dr. Wolfgang Zronek, Austria 00431-4165164 dr.zronek@vienna.at

Monster Moose – John Tini, MI 810-781-6435

"I found Mr. Haeg to be reliable, honest, and courteous in my dealings with him. He did not over-embellish to sell his hunts, & offered excellent references (successful & unsuccessful), to verify his statements. He is the type of person one enjoys doing business with & because of his integrity I plan to hunt with him again in the future." Paul Pare, FL 772-286-9522

"Old White Claws", an ancient battle scarred 9'4" Brown Bear & Beautiful 70" Moose – Doug Jayo, ID 208-322-3663 doug@jayoconstruction.com

Fishing & Ptarmigan

Our secret grayling and silver salmon hole where you don't even need to cast. Just dip anything orange in the water!

Karen &Dave Savoie, ID 115 lb. Halibut (Many of our guides when they are not hunting provide fishing trips)

"There's nothing better than a winter ptarmigan hunt out of a wilderness lodge!" (Our winter ptarmigan hunts by skis, snowshoes, snow machine & airplane have been a great hit)

"The Silver was almost as nice as the weather"

"Is this Rainbow big enough?" (16.4 lbs.)

Mother & Daughters "Silvers on the Fly"

Tom & Randy Geile, ID "Great Memories"

Eduardo Villalobos, Mexico

Camps & Food

"The Lodge"

The "Monster" Camp

"Lower Babel" Camp

Finishing the "little cabin" that got big! Base camp for many of our bear hunters & fishermen. We now rent this out to a lot of you guys that want to explore the Kenai Peninsula during the summer with your family. (Built by us guides when fishing was slow)

The famous "bomb shelter" used mostly when we are hunting spring bears in extremely deep snow. Hard to believe the most important item on these hunts is sunglasses & sun block. (85 degrees F. out)

"Ye Olde Frosty Sphincter" The coolest outhouse in Alaska!

Our home, lake, runway & hanger in Soldotna.

"Rogers Strip" Camp

Relaxing after hunt in the "Cave"

Comfortable "Rock Creek" Camp

A quiet moment by "Kayla's Kabin"

Food is almost always non freeze-dried (except for spring brown bear deep snow hunts) including steak, fresh fruit, eggs, bacon, etc. We do have difficulties with fragile items like bananas, tomatoes, and the like so don't expect items like these. Reasonable amounts of alcohol is welcome but not provided. We have gone through almost unbelievable lengths to find a way to access areas close to trophy animal country. Rarely do hunters need to venture more than 1 mile form camp to be successful. We have successfully guided many 70+ year old clients with few problems.

Transportation & Communication

"Batcub" on patrol

"Where's the snow?"

Jake & John "bringing home the bacon" (or an entire bull moose as the case may be)

"Looks like a good spot to hunt caribou!"

"Bon Voyage" Jake & Tony heading across a Class 6 river to pick up a bear.

"How are all these antlers going to fit?"

Our Coastal Brown Bear area is located on the upper end of the Alaska Peninsula. Much of the land we hunt is private land on which we have exclusive hunting rights & which borders the south edge of Lake Clark National Park. Our Moose, Grizzly, Black Bear & Caribou area is located on the western slope of the Alaska Range.

Maxx and a new friend.

Turbine Otter for "The Big Stuff"

"Firewood patrol"

"Snowshoes, big bears in dens, & sun make Frank sweat!"

"That's not a snow machine trailer!" (Note snow machine mounted under airplane)

Hauling in another camp.

"Let it snow, let it snow, let it snow."

Clients hunting moose, grizzly, caribou, and black bear fly into our Unit 19 lodge on DeHaviland Beaver's and Otter's on floats form Anchorage. Coastal Brown Bear hunters fly directly form Anchorage either into Kenai on a commuter flight or down to Chinitna Bay in Cessna 206's equipped with tundra tires for landing on the beach. Once clients reach our base lodge they transfer to our lightweight high performance PA-12's and Super Cubs for their final flight to their hunting camps. We now equip all of our guides with Iridium Satellite Phones and Very High

Frequency Radios so we have communication with all our hunters at all times. This has done wonders both safety wise and logistically by reducing flights needed before just to check on camps. Now, before I ever take to the air, I know what supplies to bring you and if I need to haul out a helper to pack out that monster bear or moose.

The Haeg Household

Hunting Friends and "Schiss" Binoculars (toilet paper roll & duct tape)

Dave's 1st Boone & Crockett Moose

Dave's 2nd Boone & Crockett Moose

Duct Tape use #1001 (Homemade Diapers)

Kayla's bath-time at lodge!

Kayla, Cassie & Jackie Grayling Fishing

Dave with another "O dark thirty" bear!

Cassie (age3) & her first Salmon!

Jackie with another Boone & Crockett trophy Caribou!

Dave grew up in the Alaskan wilderness where hunting, fishing and trapping was the only way to survive. The nearest family lived over 30 air miles away, there were no roads or telephones, and it once was 4 months before he or his parents saw another person. Dave started hunting big game alone at 14 – taking a 10' brown bear on his own at 16 and his first Boone & Crockett moose soon after. Dave

learned to fly at 16, graduated with honors from home school at 17 and declined full scholarships from 3 Ivy League Colleges so he could pursue his love of hunting and flying. At 18 Dave received both his commercial pilot and assistant guide license, at 21 his Flight Instructor license, and became a Mater Guide at 38 – one of the youngest to ever do so. Dave now has many thousands of hours flying bush planes he builds himself in support of the hundreds of hunts conducted where he grew up. Jackie was born on Kodiak Island and has grown up hunting and fishing across most of Alaska. She and Dave met in their early 20's and have been together ever since. Jackie handles the office, website, hunter scheduling and transportation, and supply purchasing along with being "Super Mom". Kayla arrived to bless the Haeg clan in 1998 and Cassie did the same in 2001. They are a big handful and have already turned into enthusiastic hunters and fishermen.

The Crew!

"Happy guides"

"I wish the 10' bears would stop killing the 70" moose" – Drew

Boone & Crockett Bull for Little German Lady "We got Big Willy" – John

"This is how you call in the big ones" – Dave

Tony (on right) "We got Big Foot!"

10' Record Book Grizzly that charged. "Everyone started shooting when it got within 20'!" - Arthur

"The fun's over after the shooting stops" – Jake

"Wilderness Jam session"

"Tell me again – why did we hike so far from camp?" – Mark with 10' Cinnamon Brown

"I think there's something out in them thar woods" – Mike

Frank with 9'10" bear he took with his bow. "Almost as exciting as that special spring hunt"

"Manage this" – Tom, Camp Manger
"Le chef"

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NO. 08-1108

Supreme Court, U.S.
FILED
MAY 14 2009
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

DAVID S. HAEG, Petitioner

V.

STATE OF ALASKA, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE ALASKA COURT OF APPEALS

PETITION FOR REHEARING

DAVID S. HAEG
Pro Se

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FACTS

Rule 13.1 required Haeg to file petition No. 08-1108 by March 1, 2009. See petition No. 08-1108. Haeg filed the petition on February 23, 2009 – 7 days before the deadline.

On February 23, 2009 the Alaska Supreme Court denied rehearing of Haeg's arbitration appeal – which concerns the same issues as No. 08-1108.

ARGUMENT

It's of overwhelming importance that the arbitration petition be considered in deciding petition No. 08-1108. As the Alaska Supreme Court's final decision was made the same day 08-1108 was filed it was impossible to combine the two petitions under Rule 12.4 so the arbitration evidence could support acceptance of petition No. 08-1108.

The arbitration petition provides irrefutable proof that Haeg's attorney Cole affirmatively gave Haeg false counsel that allowed the State to violate many basic constitutional rights – which severely harmed Haeg.

This false counsel allowed the State, unopposed, to:

1. Falsify evidence locations in order to support the charges against Haeg.
2. Use false affidavits to seize Haeg's property.
3. Not provide a hearing to contest the illegal seizure or bond the property out after they seized Haeg's property, used as primary means to provide a livelihood.
4. Promise a plea agreement to get Haeg to give a statement and to give up guiding for a year; then, when the guiding year was past and statement given, break the plea agreement and use Haeg's statement against him at trial.

In addition, the arbitration petition provides evidence that Cole and his witness intentionally gave false sworn testimony to deny what happened to Haeg.

One example of Cole's representation of Haeg, documented in the arbitration petition:

While Haeg was paying him for his counsel, Cole told Haeg over and over, month after month, there was no way to contest the State's seizure and deprivation of Haeg's airplane and other property that Haeg and his wife needed to provide a livelihood – no way to even bond the property out. Tape recordings of Cole while he was Haeg's attorney prove this. See arbitration petition transcripts.

Cole's testimony at arbitration was the same: Haeg had no right to a postseizure hearing and that "Alaska law" prevented Haeg from getting his airplane or other property back. Cole's further testified, *"I was concerned about his mental health. I told [Mrs. Haeg] I thought he was goanna commit suicide."* See arbitration transcripts.

Upon cross-examination of Cole by Haeg, it was proved "Alaska law" not only allowed a postseizure hearing but *required one "within days if not hours"* if the seized property was used to provide a livelihood. In addition, "Alaska law" irrefutably allowed property, used to provide a livelihood, to be bonded out. See arbitration transcripts.

Cole's response after he was forced to admit Haeg had a right to a prompt postseizure hearing and to bond out his property so he and his wife could have continued making a livelihood: *"David [Haeg], the time to make that decision was in April – you were almost comatose because you were so depressed about the State walking in and taking all this stuff."* See arbitration transcripts.

The people following this case tell Haeg that *Cole, knowing full well the immense pressure the loss of business property put on Haeg, thought it was better to have Haeg commit suicide then to tell Haeg the law allowed Haeg to get his property back so he and his wife could continue to provide for their 2 daughters - when Haeg had hired Cole to tell him of the law that would protect his livelihood.*

At this same time Jackie Haeg was prescribed tranquilizers and anti-depressants in order to cope with losing everything she had worked her entire life for.

This doesn't consider that Cole told Haeg the false affidavits, used to seize Haeg's property, "didn't matter" and no hearing was available to protest – when the affidavits falsified all evidence locations to Haeg's guiding area to support both the seizure of the property and the case against Haeg. That Cole had Haeg give a statement and year of guiding for a plea agreement, let the State break the plea agreement after the statement and guide year was given, and afterward let the State use the statement against Haeg. That Cole refused to obey a subpoena to Haeg's sentencing in order to inform the court of all he had Haeg do for a plea agreement the State broke uncontested by Cole – where Haeg was sentenced to 5 more years without a guide license (without credit for the year already given) when the plea agreement the State broke only required one year. *Or that Cole and the prosecutor now testify under oath Haeg's statement wasn't used – when every information, written and signed by the very prosecutor claiming otherwise, irrefutably proves it was used.*

The information Haeg went to trial on reads, ***"DAVID S. HAEG was interviewed in Anchorage on 6/11/04 and a summary...follows:"*** *- followed by 5 pages*

of Haeg's statement as probable cause for the charges against Haeg. See arbitration petition and No. 08-1108.

How is it possible that both Cole and the State's attorney can falsely claim under oath, without consequences, that Haeg's statement was never used?

People tell Haeg this is why justice must be had at any cost – professionals in such positions of trust cannot be allowed to conspire and do something so evil, incomprehensible, and damaging to the ignorant and trusting people hiring them.

Others believe the reason no one has helped is because it's too shocking to admit Haeg's own attorneys were an integral part of the injustice – it's better to claim Haeg is mistaken. *After 5 years of proceedings, countless witnesses, and a mountain of evidence there is no mistake.*

Senator Ted Stevens's case was recently reversed for nearly identical prosecutorial misconduct. Except the federal prosecutors misconduct was relatively minor when compared to the State prosecutors misconduct in Haeg's case. *"Mr. Stevens deserved a fair trial and the full protection of the law. He got neither here, and that's a larger scandal than anything he was charged with."* The argument was if this could happen to a long sitting and wealthy senator what can happen to the "little guy"? Haeg's case makes this crystal clear - *what happens is not only is the prosecutorial misconduct far more egregious – the "little guys" own attorneys help make it happen and help keep it covered up – and no one steps up to correct the injustice.*

This is an abomination that must be addressed.

In deciding this petition for rehearing Haeg asks this Court to carefully consider the following: that if Haeg is required to accept the life rending conviction & sentence he and the people following his case are being asked to accept this knowing it was obtained by the known, illegal, and unconstitutional acts of his own attorneys that he had hired and trusted to protect his family. Secondly, that the United States Constitution, which they were all raised to believe was inviolate, the rock upon which this country was based, and which protects citizens from exactly what happened to the Haeg family, is no longer working.

With the incomprehensible consequences this entails it is not believed this can be accepted and Haeg begs this Court not to ask it be accepted, which would be the result of another denial of petition 08-1108. If petition 08-1108 is not heard now this Court will no doubt hear of it again because to Haeg and Alaska's backbone - fishermen, oil workers, teachers, retired Troopers, resort and lodge operators, and numerous business owners - this is a complete breakdown in our justice system and thus cannot be allowed.

Until the following is justified Haeg will not stop until he obtains justice:

1. It's permissible for a State to falsify evidence locations – locations *specifically* used to justify the seizure of property, to justify the criminal case, and to justify the sentence – when the State knew the locations were false.

2. It's permissible for a State to seize and deprive property, used as the primary means to provide a livelihood, without a prompt postseizure hearing or notice of the opportunity for a prompt postseizure hearing.

3. It's permissible to use a plea agreement statement

against a defendant after the plea agreement failed.

4. It's permissible for a defendant's attorney to affirmatively lie to and mislead a defendant to allow the above to happen unchallenged.

RELIEF REQUESTED

In light of the fundamental breakdown in justice additionally evidenced in his arbitration petition Haeg respectfully asks this Court for rehearing of petition No. 08-1108; to consider Haeg's arbitration petition in deciding 08-1108; to order the State of Alaska and Cole to file responses so that this Court can realize the validity of Haeg's petitions; to grant petition No. 08-1108; and to order an investigation by the United States Department of Justice.

CERTIFICATE OF PETITIONER

I declare under penalty of perjury the forgoing petition is true and correct, is restricted to the grounds specified in Rule 44.2, is presented in good faith, is not for the purpose of delay, *and that I will never stop short of justice in order this may not happen again to my children or yours.* Executed on May 14, 2009.

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